Petition

81-1778

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1981
No. _____

STATE OF CALIFORNIA,

Petitioner,

v.

DAVID WENDELL RUGGLES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

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QUESTIONS PRESENTED

I

Whether, notwithstanding this Court's plurality opinion in Robbins v. California (1981) 453 U.S. ___, 101 S.Ct. 2841, 69 L.Ed.2d 744), a suspect's arrest in his car based on (1) probable cause to believe he had committed a robbery in which he used a firearm and, (2) information from a reliable informant that the suspect had a firearm in a briefcase for use in an imminent robbery, justified the warrantless seizure of firearms from an unlocked briefcase found in the suspect's car trunk.

II

Whether exigent circumstances existed under Arkansas v. Sanders (1979) 442 U.S. 753, to justify the warrantless search of an unlocked briefcase found in a suspect's car trunk where the suspect was arrested in his car at the center divider of a freeway and the arresting officers had

probable cause to believe that a firearm to be used in a robbery was secreted in the briefcase.

III

Whether the warrantless search of an unlocked briefcase found in the trunk of a car following a suspect's arrest, and contemporaneous with that arrest, is justified as a "accelerated booking search" under this Court's holding in Bullwinkle v. California (1980) 449 U.S. 988.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	1
TABLE OF AUTHORITIES	5
OPINIONS BELOW	7
JURISDICION	8
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	8
STATEMENT OF THE CASE	9
A. Statement of the Proceedings	9
B. Statement of Relevant Facts from the Motion to Supress Evidence	12
REASONS WHY CERTIORARI SHOULD BE GRANTED	17
I NOTWITHSTANDING THIS COURT'S PLURALITY OPINION IN ROBBINS V. CALIFORNIA (1981) 453 U.S. ___, PROBABLE CAUSE TO BELIEVE A FIREARM WOULD BE FOUND IN A BRIEFCASE IN THE CAR TRUNK OF RESPONDENT'S AUTOMOBILE DURING A SEARCH INCIDENT TO RESPONDENT'S LAWFUL ARREST FOR ARMED ROBBERY JUSTIFIED A WARRANTLESS SEARCH OF THE BRIEFCASE UNDER THE FOURTH AMENDMENT	17

TABLE OF CONTENTS
Continued

Page

REASONS WHY CERTIORARI SHOULD BE GRANTED

II PROBABLE CAUSE TO BELIEVE THAT A DANGEROUS WEAPON IS INSIDE A CONTAINER IN A VEHICLE AT THE CENTER DIVIDER OF A FREEWAY CONSTITUTED EXIGENT CIRCUMSTANCES UNDER ARKANSAS V. SANDERS (1979) 442 U.S. 753, AND JUSTIFIED THE WARRANTLESS SEARCH OF THE CONTAINER 24

III THE WARRANTLESS SEARCH OF AN UNLOCKED BRIEFCASE FOUND IN THE TRUNK OF A CAR FOLLOWING A SUSPECT'S ARREST AND CONTEMPORANEOUS WITH THAT ARREST IS JUSTIFIED AS AN ACCELERATED BOOKING SEARCH UNDER THIS COURT'S HOLDING IN BULLWINKLE V. CALIFORNIA 27

CONCLUSION 30

TABLE OF AUTHORITIES

Cases

	Page
Federal:	
Arkansas v. Sanders (1979) 442 U.S. 753	1,20,21, 24,25,27
Eaton v. Price (1960) 364 U.S. 263	19
Hicks v. Miranda (1975) 442 U.S. 332	28
Robbins v. California (1981) 453 U.S. ___	1,10,15,17,18, 19,21,22-23,24,25,28
United States v. Chadwick (1977) 433 U.S. 1	20,28
United States v. Healy (1974) 376 U.S. 75	8
United States v. Ross, 80-2209	23
State:	
Bullwinkle v. California (1980) 449 U.S. 988, 101 S.Ct. 522	2,27,28,29
People v. Bullwinkle (1980) 105 Cal.App.3d 82, 164 Cal.Rptr. 163	28

TABLE OF AUTHORITIES
Continued

Cases

	Page
State:	
People v. Minjares (1979) 24 Cal.3d 410, 153 Cal.Rptr. 224, 591 P.2d 514	15-16
People v. Ruggles (1981) 125 Cal.App.3d 473, 178 Cal.Rptr. 231	15

Constitutions

United States Constitution, Fourth Amendment	8,17,21
United States Constitution, Fourteenth Amendment	8

Statutes

Federal:	
28 U.S.C.: Section 1257	8
State:	
Cal. Penal Code:	
Section 211	10
Section 1538.5	8,9
Section 12022.5	10

OPINIONS BELOW

The initial California Court of Appeal opinion filed June 16, 1980, affirming the judgment of conviction, appears at pages 1 through 21 of the Appendix. The order of the California Supreme Court denying the Petition for Hearing appears at page 22 of the Appendix. The second opinion of the California Court of Appeal, filed November 10, 1981, and reversing the judgment of conviction, appears at pages 23 through 94 of the Appendix. The order of the California Court of Appeal denying rehearing appears at page 95 of the Appendix. The order of the California Supreme Court denying hearing appears at page 96 of the Appendix.

The order of the California Court of Appeal denying petitioner's Application for Stay of Issuance of the Remittitur and for an Order Deferring Execution and Enforcement of the Judgment appears at page 97 of the Appendix.

JURISDICTION

The judgment of the California Court of Appeal was filed on November 10, 1981. (Appen., pp. 23-94.) A timely Petition for Hearing was denied by the California Supreme Court on January 27, 1982. (Appen. p. 96.) This Petition for Writ of Certiorari is filed within 60 days of that date and is therefore timely filed. (United States v. Healy (1974) 376 U.S. 75, 77-80, and cases cited.) This Court's jurisdiction is invoked under 28 United States Code section 1257, subdivision (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution is reproduced at page 99 of the Appendix.

The Fourteenth Amendment to the United States Constitution is reproduced at pages 99 through 102 of the Appendix.

Section 1538.5 of the California Penal Code is reproduced at pages 102 through 117 of the Appendix.

STATEMENT OF THE CASE

The instant case involves the legality of a warrantless search of an unlocked briefcase found in the trunk of a car following the suspect's arrest for robbery. At the time of the arrest, the police were investigating information that another robbery was about to be committed by the suspect. The police also had reasonable cause to believe, based on information received from a reliable informant, that the briefcase contained a firearm which was to be used in the robbery. The police also knew that the suspect had recently been involved in crimes in which he had used firearms.

A. Statement of the Proceedings

Following respondent Ruggles' motion to suppress evidence pursuant to California Penal Code section 1538.5, and pursuant to a negotiated plea bargain, respondent Ruggles withdrew his previously entered plea of not guilty, entered a plea of guilty to the crime of robbery in

violation of California Penal Code section 211, and admitted an allegation that he had used a firearm within the meaning of California Penal Code section 12022.5. The California Court of Appeal filed an opinion on June 16, 1980, which held respondent Ruggles' motion to suppress evidence was properly denied and affirmed the conviction. (Appen., pp. 1-21.) The California Supreme Court denied respondent's Petition for Hearing. (Appen., p. 22.)

On July 2, 1980, this Court granted certiorari, ordered the judgment vacated, and remanded the case to the California Court of Appeal for further consideration in light of Robbins v. California (1981) 453 U.S. ___.

The California Court of Appeal, Second Appellate District, Division One, then reversed the judgment of conviction. (Appen., pp. 23-94.) The California Court of Appeal denied petitioner's subsequent Petition for Rehearing. (Appen., p. 95.) Thereafter the California Supreme Court denied a Petition for Hearing. (Appen., p. 96.)

The California Court of Appeal, Second Appellate District, Division One, denied petitioner's Application for Stay of Issuance of the Remittitur and for an Order Deferring Execution and Enforcement of the Judgment. (Appen., p. 97.) The remittitur was issued by the California Court of Appeal, Second Appellate District. (Appen., p. 98.)

On March 11, 1982, Justice William H. Rehnquist granted petitioner's Application for a Stay of the Enforcement of the Judgment pending timely filing and disposition of a Petition for Writ of Certiorari.[1/]

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1. On March 8, 1982, following resumption of trial proceedings and pursuant to the Remittitur issued by the California Court of Appeal, the trial court granted respondent's Motion to Suppress Evidence as to the items found in his briefcase. (Appen., p. 118.) On March 16, 1982, the trial court vacated its order of March 8, 1982, in its entirety based on the March 11, 1982 order issued by Justice Rehnquist. (Append., p. 119.)

B. Statement of Relevant Facts from the Motion to Suppress Evidence

In November 1978, police officers at the Los Angeles Police Department received information from an informant that respondent Ruggles had participated in several armed robberies in Los Angeles, including a recent motel robbery involving an accomplice. The information included the following facts. During the motel robbery, respondent Ruggles had posed as a law enforcement officer. He had been armed and had handcuffed the victim. Respondent was a parolee and had been in prison for armed robbery.

After this information was verified, the victim of the motel robbery identified respondent Ruggles' photograph. The police concluded they had probable cause to arrest respondent Ruggles but made no arrest since they wanted to effectuate the arrest of the accomplice as well. Surveillance of respondent Ruggles was commenced.

On January 2, 1979, the same informant

told the police that the next morning respondent Ruggles and another individual were going to commit a major jewelry store robbery in Santa Barbara. Respondent was to meet the second suspect at 8 o'clock the next morning. The informant also indicated that two firearms would be used in the robbery, one firearm to be carried in the small of respondent's back and the other in a brown briefcase or satchel. According to the informant, when respondent Ruggles did not carry the firearm in the small of his back, he usually carried it in the briefcase with the other firearm.

The next morning the surveillance team observed respondent drive to the location where he was to meet the second suspect. He parked his car and got out. Respondent continuously looked up and down the street, and from side to side. He then walked to the rear of his car, opened the trunk, removed a brown briefcase and, continuing to make careful observations of the surrounding area, entered an apartment building complex.

Approximately 10 to 15 minutes later,

respondent Ruggles returned to the car, again looking up and down the street. He opened the trunk and replaced the brown briefcase. He then drove off. When the surveillance team decided respondent Ruggles was about to leave the county, they stopped him on the freeway. Respondent parked his car on the shoulder in the center of the freeway, just to the left of the fast lane.

Respondent Ruggles was arrested. Then one of the officers looked into respondent's car and observed in plain view, a police call scanner, narcotic paraphernalia which the officer believed to be a "hype" kit, and two small vials which the officer believed contained controlled substances. The officer opened the car trunk and observed the brown briefcase and a large scanner for picking up police calls. The officer opened the unlocked brown briefcase and observed a bag similar to a shaving kit which was unzipped and contained a firearm. In the briefcase itself was another firearm, ammunition, a holster, a sap, handcuffs, gloves, a flashlight and a bandanna.

Numerous other items were found in the trunk of the car, including two duffel-type bags, a change of clothes and masks.

The trial court denied respondent Ruggles' motion to suppress evidence, finding that the officers had probable cause to arrest him and stop his car. The trial court also found that the officers were justified in searching the trunk of the car and briefcase since there was a definite nexus between the information known to the police officers and the contents of the briefcase consisting of weapons and other possible instrumentalities of crime.

Following respondent's conviction, the California Court of Appeal reversed the judgment of conviction in People v. Ruggles (1981) 125 Cal.App.3d 473, 178 Cal.Rptr. 231, and held (by a vote of 2-1) that respondent Ruggles' motion to suppress evidence was improperly denied. The court reasoned that the warrantless search of the briefcase found in the trunk of the car was illegal under this Court's plurality opinion in Robbins v. California (1981) 453 U.S. ___, and People v.

Minjares (1979) 24 Cal.3d 410, 153 Cal.Rptr. 224, 591 P.2d 514.[2/]

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2. People v. Minjares, supra, was decided exclusively on federal constitutional grounds.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I

NOTWITHSTANDING THIS COURT'S PLURALITY OPINION IN ROBBINS V. CALIFORNIA (1981) 453 U.S. ___, PROBABLE CAUSE TO BELIEVE A FIREARM WOULD BE IN A BRIEFCASE FOUND IN THE CAR TRUNK OF RESPONDENT'S AUTOMOBILE DURING A SEARCH INCIDENT TO RESPONDENT'S LAWFUL ARREST FOR ARMED ROBBERY JUSTIFIED A WARRANTLESS SEARCH OF THE BRIEFCASE UNDER THE FOURTH AMENDMENT

This case presents an important question of law as to whether the Fourth Amendment requires the police to obtain a search warrant before opening an unlocked briefcase found in the suspect's car trunk incident to a lawful arrest even if they

have probable cause to believe the briefcase contains a firearm.

In the instant case, the police officers opened an unlocked briefcase found in respondent's car trunk following his lawful arrest for robbery. At the time of the arrest, the police officers had information from a reliable informant that respondent was keeping a firearm in the briefcase for imminent use in a jewelry store robbery. The police officers were also aware that respondent previously had been convicted of armed robbery and had been involved in additional robberies in which he used firearms.

The California Court of Appeal below originally upheld the search of the unlocked briefcase and affirmed the conviction, but later reversed itself after this Court vacated the judgment and remanded the case for further consideration in light of Robbins v. California, supra. Relying on the plurality opinion in Robbins v. California, the California

Court of Appeal held the search was illegal.[3]

Reliance on the plurality opinion in Robbins resulted in a reversal of the criminal conviction even though the officers who had just arrested respondent for robbery had probable cause to believe the briefcase contained a firearm and that, but for the arrest having foiled his plot, he was about to commit yet another robbery. Having received information that respondent kept a firearm in a briefcase and further having seen respondent place a briefcase in his car trunk on the day of his arrest and the planned jewelry store robbery, the police could reasonably conclude that the briefcase contained a loaded firearm which could pose a serious public danger.

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3. In Robbins v. California, supra, only four members of this Court joined in the lead opinion. The law is well settled that a judgment of an equally divided United States Supreme Court "is without force as precedent." (Eaton v. Price (1960) 364 U.S. 263, 264.)

The search and seizure of the briefcase on the facts of this case clearly does not run afoul of this Court's decisions in United States v. Chadwick (1977) 433 U.S. 1 and Arkansas v. Sanders (1979) 442 U.S. 753. Chadwick and Sanders stand for the proposition that a warrant is necessary for searching a trunk and/or luggage from an automobile properly stopped and searched for contraband. However, footnote 13 of the Sanders opinion makes quite clear that some containers found in a car, such as a kit of burglar tools or a gun case, cannot support a reasonable expectation of privacy because their contents may be discerned from their outward appearance and therefore a warrant would be unnecessary for their search and seizure. (See Arkansas v. Sanders, supra, at pp. 764-765.) In the instant case the totality of the facts and circumstances make it abundantly clear that respondent's briefcase could not, under any circumstances, support a "reasonable expectation of privacy" in view of the officer's information that a firearm was contained

in the briefcase. The briefcase was thus, in effect, a virtual gun case and a warrant was therefore not necessary for its search or seizure. (See Arkansas v. Sanders, supra, 442 U.S. at pp. 764-765.)

Because the search of the briefcase was clearly proper under this Court's holding in Sanders, it was invalidated only because of the plurality opinion in Robbins limiting the warrantless search of containers found in car trunks. Petitioner submits, however, that when officers have probable cause to believe that the contents of such a container are in and of themselves inherently dangerous, any need to obtain a warrant is then dissipated. What happened in the instant case is that the officers knew the briefcase contained an inherently dangerous object, to wit, a firearm. The invalidation of the search of a briefcase under the circumstances of this case makes clear that this Court should reconsider its plurality opinion in Robbins v. California.

The Fourth Amendment prohibits only police activity which is "unreasonable."

In the instant case the officers not only had knowledge of the probable contents of the briefcase, but also probable cause to believe the briefcase contained a dangerous firearm. Petitioner submits that under the circumstances of this case the officers acted reasonably in undertaking an immediate seizure of the weapon. To have acted otherwise would have been "unreasonable."

Applicable here are Mr. Justice Rehnquist's comments in his dissent in Robbins:

> "Not only has historical study 'suggested that in emphasising the warrant requirement over the reasonableness of the search the Court has "stood the fourth amendment on its head" from a historical standpoint.' (Coolidge, supra, at 492 (Harlan, J., concurring) (quoting T. Taylor, Two Studies in Constitutional Interpretation, 23-24 (1969)), but the Court has failed to appreciate the impact of its decisions, not mandated by the Fourth Amendment, on law enforcement. . . ." (Robbins v.

California, supra, 453 U.S. ___, ___ (69 L.Ed.2d 744, 759, 101 S.Ct. 2841).)

Finally, it must be noted that the continued validity of the rule in Robbins v. California, appears to be in serious question in view of this Court's directive to the parties in United States v. Ross, 80-2209, for additional briefing on the question of whether this Court should reconsider its holding in Robbins v. California, supra, 453 U.S. ___. Since the California Court of Appeal relied on the plurality opinion in Robbins, and it appears this Court is reconsidering the plurality opinion in Robbins, certiorari should be granted.

II

PROBABLE CAUSE TO BELIEVE THAT A DANGEROUS WEAPON IS INSIDE A CONTAINER IN A VEHICLE AT THE CENTER DIVIDER OF A FREEWAY CONSTITUTED EXIGENT CIRCUMSTANCES UNDER ARKANSAS V. SANDERS (1979) 442 U.S. 753, AND JUSTIFIED THE WARRANTLESS SEARCH OF THE CONTAINER

Even assuming arguendo that Robbins is applicable to the instant case, petitioner submits that the warrantless search of the briefcase found in respondent's car trunk was proper because of the existence of exigent circumstances. Petitioner submits that probable cause to believe that a dangerous weapon is contained in a container in a vehicle at the center divider of a freeway constitutes exigent circumstances under this Court's holding in Arkansas v. Sanders (1979) 442 U.S. 753, and justifies the warrantless search of the container.

The plurality in Robbins expressly acknowledged by implication that "[T]he presence of any circumstances that would constitute a valid exception to this general rule, . . ." is still cognizable even under Robbins. Indeed, the Robbins plurality opinion cites with approval footnote 11 of Arkansas v. Sanders, supra, which stands for the proposition that exigent circumstances may justify a warrantless search of luggage taken from a vehicle following a lawful arrest. (See Robbins v. California, supra, 453 U.S. ___, 69 L.Ed.2d 744, 101 S.Ct. 2841.) Petitioner submits that the facts in the instant case justified the warrantless search of the briefcase found in the trunk of the car because of the existence of exigent circumstances. As noted by Justice Hanson of the California Court of Appeal in his dissenting opinion:

> "Here, there was probable cause for the search because the officers had knowledge that the probable contents of the brown attache case consisted of two handguns and probably other instrumentalities used in

robberies already committed and being transported for use in a robbery of a jewelry store in Santa Barbara. While the briefcase may have been under the control of the police, the totality-of-the-circumstances includes the fact that the defendant was arrested in the center divider of a freeway with vehicles speeding by a few feet away at speeds in excess of 55 m.p.h. This locale necessitated quick action by the officers to confirm the presence of the dangerous weapons and to secure them. By merely flipping a finger, the police unlatched the unlocked catches and confirmed the presence of two guns, ammunition, a sap, handcuffs, flashlight and gloves in the briefcase. I would hold that the totality-of-the-circumstances constituted exigent circumstances rendering the obtaining of a warrant an impractical alternative." (Appen., pp. 84-85.)

Petitioner submits that, when police officers have probable cause to believe that a dangerous weapon is contained in a

container in a vehicle on the center divider of a freeway, such a showing should constitute, as a matter of law, exigent circumstances under Arkansas v. Sanders, supra, 442 U.S. 753, to justify the warrantless search of the container. Petitioner further submits that this Court should grant certiorari to resolve the issue of what type of showing is necessary in order to justify a warrantless search of a container found in the trunk of a car following a lawful arrest based on the existence of exigent cirumstances.

III

THE WARRANTLESS SEARCH OF AN UNLOCKED BRIEFCASE FOUND IN THE TRUNK OF A CAR FOLLOWING A SUSPECT'S ARREST AND CONTEMPORANEOUS WITH THAT ARREST IS JUSTIFIED AS AN ACCELERATED BOOKING SEARCH UNDER THIS COURT'S HOLDING IN BULLWINKLE V. CALIFORNIA

Irrespective of this Court's ultimate

holding as to the Robbins rule, the search in the instant case was clearly justified as an "accelerated booking search" following arrest. The California Court of Appeal below refused to acknowledge the validity of the search under such a theory, completely ignoring this Court's holding in Bullwinkle v. California, supra, 449 U.S. 988, 101 S.Ct. 522, wherein defendant's appeal to this Court was dismissed "for want of a substantial federal question." Such dismissal, which constituted a decision on the merits under Hicks v. Miranda (1975) 422 U.S. 332, 344-345, in effect, affirmed the finding of the California Court of Appeal that this Court's opinion in United States v. Chadwick (1977) 433 U.S. 1, did not render unconstitutional searches of purses of felony-arrestees under the "accelerated booking search" theory. (People v. Bullwinkle (1980) 105 Cal.App.3d 82, 164 Cal.Rptr. 163.)

In the instant case, it would not have been unreasonable for the police to have taken the unlocked briefcase along with the other items found in the car

compartment and in the trunk to the police station for booking. The contents of the briefcase surely would have been disclosed at the time of booking at the police station during an inventory. Since the items in the briefcase would have been discovered at the time of booking, it was not unreasonable for the police officers to conduct a search of the briefcase in the field at the scene of respondent's arrest. (See Bullwinkle v. California, supra.)

CONCLUSION

For the foregoing reasons, petitioner submits that a Writ of Certiorari should issue to review the decision of the Court of Appeal of the State of California.

Respectfully submitted,

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APPENDIX

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,	) 2 Crim. No. 35011
Plaintiff and	) (Super. Ct. No. A347889)
Respondent,	) COURT OF APPEAL-2D DIST.
v.	) FILED
DAVID WENDELL RUGGLES,	) JUN 16 1980
Defendant and	) CLAY ROBBINS, JR. Clerk
Appellant.	) _____
_____	) Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Ronald M. George, Judge. Affirmed.

Paul W. Grace, under appointment by the Court of Appeal, for Defendant and Appellant.

George Deukmejian, Attorney General, Robert H. Philibosian, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, John R. Gorey and Penina S. Van Gelder, Deputy Attorneys General, for Plaintiff and Respondent.

David Wendell Ruggles appeals his conviction, pursuant to guilty plea, on one count of robbery with the use of a firearm in the commission of the offense.

FACTS

Defendant Ruggles was charged in a two count information with (1) robbery (Pen. Code, § 211) alleging use of a firearm in the commission of the offense (Pen. Code, §§ 12022.5, 1203.06) and (2) possession of a firearm by an ex-felon (Pen. Code, § 12021). The information was subsequently amended to reflect six prior convictions and the case was consolidated with a second case in which a single count was charged against defendant Ruggles. Defendant pleaded not guilty, denied the priors and filed a 1538.5 motion to suppress which the trial court denied. Defendant thereupon changed his plea to guilty on the first count of the amended information (robbery and use of a weapon) and he admitted three of the prior felony convictions charged. On motion of the district attorney the second count

(possession of a firearm by an ex-felon) and the single count in the second case were dismissed. Probation was denied and defendant was sentenced to state prison for nine years (four years for robbery, a consecutive two year sentence for the admitted use of a firearm, and three consecutive one year terms for the three admitted prior convictions [Pen. Code, § 667.5, subd. (b)]). The People's motion to dismiss the remaining prior convictions was granted.

Defendant Ruggles has appealed his conviction complaining that the trial court erred in denying his 1538.5 motion to suppress certain evidence obtained from a search of the vehicle he was driving at the time of his arrest. The record includes certain portions of the preliminary hearing transcript which trial court considered pursuant to stipulation.

In July 1978 there was a robbery at the Nutel Motel and Ruggles, who was identified by Mr. John Carragher, the manager, was subsequently apprehended by police officers on suspicion of this crime. Defendant's arrest came about as

the result of an investigation by Officer Robert McSeveney of the Los Angeles Police Department.

At the 1538.5 hearing Officer McSeveney testified that in November of 1978 he received information from Sergeant Morosky that Ruggles had participated in various armed robberies including the robbery with an accomplice of a motel in Los Angeles; that Ruggles was on parole for armed robbery; that he lived in San Pedro and drove a black over red Mercury Montego; and that he was a Caucasian male approximately 39 years old, 6 feet tall and weighed around 200 pounds. Officer McSeveney verified this information, which was given to Morosky by an informant, by checking various sources including the police department's records which disclosed that in several robberies Ruggles had posed as a law enforcement officer showing a badge. He also learned that a few days before the robbery of the Nutel Motel, Ruggles was seen in the vicinity posing as a law enforcement officer, and the perpetrator of that robbery had shown a badge, represented

that he was with some state department, and had used handcuffs on the victim.

McSeveney, who concluded that Ruggles had committed the robbery of the Nutel Motel, obtained defendant's driver's license photograph and constructed a showup card including that photograph among six other pictures. Mr. Carragher, who had clearly seen defendant at least twice before the robbery posing as a narcotics agent, identified the person in the driver's license photograph as the robber. Although the officer believed that he then had probable cause to arrest defendant Ruggles, he refrained because he and other officers were still attempting to identify the second suspect involved in the robbery. Police maintained a helicopter surveillance of defendant Ruggles at his San Pedro residence in an attempt to identify the second suspect.

Finally, on January 2, 1979, Sergeant Morosky told Officer McSeveney that defendant Ruggles and a partner would commit a major robbery probably the next day. The defendant was to meet his partner at 8 a.m. on Reseda Boulevard in

the San Fernando Valley and they would then proceed to rob a jewelry store possibly in Santa Barbara. The informant said two handguns would be used, one of them a blue steel automatic, and that Ruggles would probably carry one weapon in the small of his back and the second weapon in a briefcase. Officer McSeveney conveyed this information to the surveillance team and also told them that the defendant had been involved in a shoot out in Orange County, that he had multiple prior felony convictions and was to be considered armed and dangerous, and that the team should attempt to stop and arrest Ruggles if it appeared he was leaving Los Angeles County.

Officer Brooks of the surveillance team testified that he received the foregoing information together with a description of defendant Ruggles, the car he was driving, and its license number. As Officer Brooks pulled onto Reseda Boulevard on the morning of January 3, 1979, he saw defendant Ruggles' car and followed him. Defendant parked on the north side of Erwin, got out of the car

and surveyed the street, then opened the trunk and removed a brown attache case which he took with him into an apartment building complex. About 15 minutes later, defendant Ruggles returned to the car, surveyed the street again, then opened the trunk and replaced the brown briefcase therein. He closed the trunk, got into the car, drove down Reseda Boulevard toward the freeway, and finally got onto the freeway and turned westbound. The car driven by Officer Brooks and other police surveillance units followed Ruggles until it appeared that he was leaving the county and then the officers decided to stop and arrest him on suspicion of robbery.

A black and white police car with red lights turned on pulled up behind defendant's car when Ruggles stopped his car along the center divider. The police car pulled up directly behind him while Officer Brooks pulled his police car in front of Ruggles' car. Defendant Ruggles immediately got out of his car as other officers carrying guns approached. Defendant complied with their request to raise his hands. He was then ordered to

lay down prone, was handcuffed and patted down, and was told that he was under arrest.

As Officer Brooks approached defendant Ruggles, he peered into the vehicle through the open window on the driver's side and saw on the front seat a small hand-held police call scanner. In plain view on the back seat was a syringe and needle and two little vials of the type the officer recognized as those customarily containing narcotics. In the opinion of the officer the syringe and needle were a "hype" kit and the vial and bottles contained some type of controlled substance. Defendant Ruggles, however, did not appear to be under the influence of drugs or narcotics.

The officer took the car keys from defendant Ruggles' hand and opened the trunk. In the trunk he found a large police call scanner standing next to the brown briefcase. The officer took the unlocked briefcase out of the trunk, opened it and found inside a holster, a sap, handcuffs, some gloves, a flashlight and a bandana together with an unzipped

bag similar to a shaving kit. He found another gun in the unzipped bag. The officer also opened a couple of other bags which he found in the trunk and there he found a three foot sledge hammer, miscellaneous clothes and a brown cap. In the trunk there was a raincoat, and some Halloween-type masks with tape over the eye holes, and a scanner company manual entitled "Police Frequencies".

Defendant testified on his own behalf that when he noticed a police car behind him on the freeway that morning he promptly stopped and got out of his car. An officer ordered him to lie down on the ground or he would "blow his fucking head off." When the defendant complied, officers rushed in and grabbed his arms and one of the officers holding a shotgun put his foot on defendant's neck and held him down. While the defendant was still lying down, an officer asked if he could look in his car but the defendant refused. The officers then took the keys from the defendant's hand and opened the trunk.

ISSUES

Defendant Ruggles contends on appeal (1) that officers did not have probable cause to arrest him; (2) that Officer Brooks did not have sufficient probable cause to conduct a warrantless search of the trunk of his car; and (3) that the search without a warrant of the briefcase was illegal.[1/]

DISCUSSION

I

Contrary to defendant's contention, the evidence introduced at the 1538.5 hearing amply supported the trial court's

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1/ Although defendant also argues that the trial court correctly concluded that he did not voluntarily consent to the search of the vehicle, and that the plain view observation of narcotics paraphernalia in the car did not justify a trunk search, the People concede these issues and they are therefore not matters for our review.

determination that probable cause existed for his arrest without a warrant. In a 1538.5 hearing, the trial court sits as the trier of fact. It is the role of the reviewing court only to measure the facts, as found by the trier, against the constitutional standards of reasonableness. (People v. Lawler (1973) 9 Cal.3d 156, 160.)

Probable cause to arrest without a warrant is based upon the facts known to the officers at the time of the arrest. (People v. Lara, (1967) 67 Cal.2d 365, 373-374.) The standard is whether a man of ordinary care and prudence would be led to believe and conscientiously entertain an honest and strong suspicion that the accused is guilty. (People v. Cockrell (1965) 63 Cal.2d 659, 665.) The information Officer McSeveney obtained in the present case, derived from his investigation and Carragher's photographic identification, established probable cause to arrest Ruggles. After he received a tip that Ruggles might have robbed a Los Angeles motel, Officer McSeveney investigated. As the record discloses he

learned that Ruggles during several robberies posed as a law enforcement officer, that Ruggles was seen near the Nutel Motel posing as a law officer, and the robber had flashed a badge.

McSeveney's theory that Ruggles may have been connected with that robbery was substantiated by information he obtained from the employees of the Nutel Motel. Carragher, the motel manager, was present during the commission of the crime and positively identified Ruggles, whom he had met twice before, as one of the two perpetrators of the robbery. He identified defendant less than two weeks thereafter from a photo spread of six men prepared by Officer McSeveney.

As a result of information obtained by McSeveney's investigation and Carragher's identification of defendant, the police had reasonable cause to believe that Ruggles had participated in the Nutel robbery. Although defendant argues that there was a delay of over a month from the time the officers had probable cause to the time of defendant's arrest, he has presented no facts from which it can be

concluded that the probable cause to seize him had gone stale. In view of the fact that the arrest was made in public, the arrest without a warrant is not offensive to defendant's constitutional rights. (United States v. Watson (1976) 423 U.S. 411, 423-424.)

II

Defendant next contends that the search of the trunk of his car at the time of his arrest was invalid.

Searches conducted outside the judicial process are per se unreasonable, subject to a few specific exceptions. (Katz v. United States (1967) 389 U.S. 347, 357.) It is the burden of the People to show that the search falls within one of those exceptions. (People v. Minjares (1979) 24 Cal.3d 410, 416.)

The warrantless search of the trunk of defendant's car in the case at bench was justified under the "automobile exception" to the warrant requirement. This exception allows the police to conduct a warrantless search of an automobile where

there is probable cause, and exigent circumstances make it impracticable for the police to obtain a warrant. (Chambers v. Moroney (1970) 399 U.S. 42, 48-51.)

The automobile exception is applied where the seizing officer has probable cause that the contents of the automobile offend against the law. (Carroll v. United States (1924) 267 U.S. 132, 155-156, 158-159.) This requirement is satisfied in the case at bench because the evidence disclosed that immediately prior to defendant's arrest the officers received a second tip from the original informant saying that defendant was planning another crime and had two handguns in his possession. Police are entitled to rely on such information when it is shown that both the informant and his information have been reliable. (Aguilar v. Texas (1964) 378 U.S. 108, 114-115.) In the present case police were entitled to conclude that the informant was reliable because McSeveney had by independent investigation established that his first tip to the police was true. Furthermore, the informant's information

was shown to be reliable because it was corroborated by other facts, e.g., Ruggles' plan to rendezvous with someone else at an identified location, his plan to commit another robbery, the fact that he would have two guns with him, one of which he would have in a brown attache case.

Information given by an informant is sufficient as a basis for probable cause if it is corroborated by other facts, sources, or circumstances. (People v. Lara, supra, 67 Cal.2d at 374-375.) The presence of the defendant at the rendezvous location at the correct time, the fact that he was seen taking the brown attache case out of the trunk and later returning it to the trunk, that it appeared he planned to commit a crime in Santa Barbara because he was apprehended driving out of Los Angeles County westbound corroborated the tip in its essential facts. Independent corroboration occurred through the officers' observation of Ruggles' suspicious behavior, continuous surveying of the street while he was removing and carrying

the attache case and again when he returned it to the trunk of his car. Such corroboration provided the officers with reasonable grounds to believe that the informant was telling the truth, and probable cause for the police to believe that the attache case in the trunk contained a gun.

Defendant argues, however, that there was no exigent circumstances in this case (Chambers v. Moroney, supra, 399 U.S. at 51) because the car was at the time of the search within the exclusive control of the police. Nonetheless, due to the inherent mobility of the automobile various automobile searches have been upheld where no immediate danger was presented. (South Dakota v. Opperman (1976) 428 U.S. 364, 367.) If the police have to take the time to get a warrant to search every car on the highway, they run the risk that the vehicle may be moved out of the locality or the evidence destroyed. (Carroll v. United States, supra, 267 U.S. at 153.) The fact that the occupants of the automobile have already been arrested does not negate the exigent circumstance.

(Chambers v. Moroney, supra, at 44.)

Despite Ruggles' arrest his car was still a fleeting target, it was on an open highway, and there was a possible confederate waiting to remove the evidence. (Coolidge v. New Hampshire (1971) 403 U.S. 443.) There had been no earlier opportunity to gain a warrant because the car had been under constant police surveillance; and now that it was seized, there was no constitutional difference between searching it or holding it until a warrant could be obtained. (Chambers v. Moroney, supra, 399 U.S. at 52.) Consequently, the search of the trunk of the car without a warrant was valid under the automobile exception.

III

Defendant's final contention is that the officers illegally searched the contents of the briefcase. In the present case in view of the existence of exigent circumstances under the automobile exception and the doctrine of inevitable discovery (People v. Superior Court

(Tunch) (1978) 80 Cal.App.3d 665) the search of Ruggles' luggage without a warrant was valid. The luggage, like the car itself, constituted a fleeting target. It was mobile; it was capable of being easily lost or stolen; and it was in the center of a freeway where "posting a guard" was impractical. In addition, officers had reason to believe the attache case contained a dangerous weapon. The facts of this case are distinguishable from those of the recent Supreme Court cases where the search of luggage was disapproved when it was merely to obtain evidence of the crime committed. (United States v. Chadwick (1977) 433 U.S. 1; People v. Dalton (1979) 24 Cal.3d 850; People v. Minjares, supra, 24 Cal.3d 410.)

In fact, federal courts have upheld the search of luggage under the automobile exception where, for instance, there was probable cause for the search and the suitcase was closely related to the reason for the arrest. (United States v. Tramunti (2d Circ. 1975) 513 F.2d 1087 at 1104; see also United States v. Finnegan (9th Circ. 1977) 568 F.2d 637.)

Finally, under the circumstances of the case at bench obtaining a warrant would be a mere formality. Since the police already had probable cause to search the attache case, a warrant would have been routinely forthcoming. (See Arkansas v. Sanders (1979) 442 U.S. 753, 770 (dissenting opinion).) Even if a warrant is required, the end result is the same -- the inevitable discovery of the instrumentalities of the crime. Therefore, the doctrine of inevitable discovery permits the evidence to be admitted as an exception since the warrant requirement would not produce the desired effect. (People v. Superior Court (Tunch), supra, 80 Cal.App.3d 665.) In fact, to enforce the warrant requirement would be likely to have an adverse practical effect since it might unjustly grant criminals immunity from prosecution. (See Novikoff, The Inevitable Discovery Exception to the Constitutional Exclusionary Rules (1974) 74 Colum.L.Rev. 88.)

In any event, there is no logical distinction between searching a trunk and

searching luggage found in the trunk, since there is no reason for greater expectation of privacy. (Arkansas v. Sanders, supra, 442 U.S. 753, 769 (dissenting opinion).) In the present case, there was no showing of expectation of privacy since although the trunk was locked, the briefcase was in fact unlocked and the shaving kit type bag inside was unzipped. Moreover, once an individual is in police custody and his personal property has been seized, the additional intrusion of a search of luggage is at best only incidental. (Arkansas v. Sanders, supra, at 770.)

"Where it is shown that a suspect would have been jailed and thus subject to a booking search, the fact that a thorough search of the booking type occurs prior to the actual booking process does not render the search illegal, since no additional or greater intrusion on the privacy of the suspect is involved. (People v. Barajas, 81 Cal.App.3d 999, 1008-1009; People v. Flores, 100 Cal.App.3d 221, 229-230; see People v. Superior Court (Simon), 7 Cal.3d 186, 208-209; People v. Longwill,

14 Cal.3d 943, 948; People v. Brown, 88 Cal.App.3d 283, 293.)" (People v. Bullwinkle (Apr. 24, 1980, 2 Crim. Nos. 33763 and 34931) ___ Cal.App.3d ___.)

DISPOSITION

In view of the fact that the 1538.5 motion to suppress was properly denied the judgment of conviction is affirmed.

HANSON, J.

We concur:

LILLIE, Acting P.J.

RADIN, J.*

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* Assigned by the Chairperson of the Judicial Council.

ORDER DUE
August 15, 1980

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL
2nd DISTRICT, DIVISION 1, Crim. No. 35011

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

SUPREME COURT
F I L E D
AUG 13 1980
LAURENCE P. GILL, Clerk
Deputy

PEOPLE
v.
RUGGLES

Appellant's petition for hearing DENIED.

Bird, C.J., is of the opinion the petition should be granted.

BIRD
Chief Justice

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,	) 2 Crim. No. 35011
Plaintiff and	) (Super. Ct. No. A347889)
Respondent,	) COURT OF APPEAL-2D DIST.
v.	) F I L E D
DAVID WENDELL RUGGLES,	) NOV 10 1981
Defendant and	) CLAY ROBBINS, JR. Clerk
Appellant.	) _____
_____	) Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Ronald M. George, Judge. Reversed.

Paul W. Grace and Stephen Yagman, under appointment by the Court of Appeal, for Defendant and Appellant.

George Deukmejian, Attorney General, Robert H. Philibosian, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, William R. Pounders and John R. Gorey, Deputy Attorneys General, for Plaintiff and Respondent.

David Wendell Ruggles (defendant) appeals his conviction after a guilty plea, on one count of robbery with the use of a firearm in the commission of the offense.

PROCEDURAL HISTORY

Defendant was charged with (1) robbery (Pen. Code, § 211) and the use of a firearm in the commission of the offense (Pen. Code, §§ 12022.5) and (2) possession of a firearm by an ex-felon (Pen. Code, § 12021). The information was subsequently amended to charge six prior convictions, and thereafter the case was consolidated with a second case in which a single count of robbery (Pen. Code, § 211) was charged. Defendant pled not guilty to the charges, denied the priors, and moved to suppress evidence pursuant to section 1538.5 of the Penal Code. A hearing on the 1538.5 motion ensued, and following denial of that motion by the trial court, defendant, pursuant to a negotiated plea, withdrew his not guilty plea and entered a plea of guilty to count I (robbery),

admitted the use allegation charged under section 12022.5, and also admitted three of the six prior convictions.

Defendant then appealed the denial of his 1538.5 motion and the judgment of conviction. This court on June 16, 1980, filed its unpublished opinion wherein we ruled that the 1538.5 motion to suppress was properly denied and affirmed the conviction. On August 13, 1980, the California Supreme Court denied defendant's petition for a hearing. On November 6, 1980, defendant filed a petition for a writ of certiorari with the United States Supreme Court.

Defendant's petition presented to the Supreme Court a single question: "Was the warrantless search of petitioner's briefcase, while he was under the exclusive control of the police, invalid, thereby necessitating the granting of petitioner's motion to suppress?"

On July 2, 1981, the United States Supreme Court granted defendant's petition and the clerk of the court advised this court, "[T]he judgment is vacated and the cause is remanded to the Court of Appeal

of California, Second Appellate District, for further consideration in light of Robbins v. California, 453 U.S. ___ 1981."

FACTS

In November 1978 Sergeant Morosky of the Los Angeles Police Department, Intelligence Division, received information that defendant Ruggles had participated in several armed robberies in the City of Los Angeles. The sergeant communicated this information to Officer Robert G. McSeveney of the Robbery-Homicide Division of the Los Angeles Police Department. McSeveney was also informed that defendant was a parolee, had been in prison for armed robbery, and was living in San Pedro. He was given a physical description of the defendant, and he obtained verification of defendant's description and criminal record from the Records and Identification Division of the department. Morosky indicated to McSeveney that defendant had been involved in a recent motel robbery in which he had been accompanied by a male Latin and that

during the commission of the robbery the defendant had been armed and had handcuffed the victim, and that defendant drove a black over red Mercury Montego automobile. It was learned by McSeveney that defendant had been seen in the locale of the Nutel Motel and that he posed as a law enforcement officer. During the Nutel Motel robbery the victim had been shown a badge and told that the robber was an agent of the state narcotics department or of the department of justice.

After making a showup card with a photograph of the defendant, McSeveney displayed that card to the victim of the robbery and to two female employees thereof. Mr. Carragher, the victim, stated that the person in the photograph strongly resembled the man who had robbed him.

From the information received by McSeveney concerning the Nutel robbery, he concluded that the description of the robber coincided with that of the defendant, that the defendant was the robber, and that he had probable cause to arrest defendant. In spite of these

conclusions no attempt was made to arrest the defendant because the officers hoped that by placing him under surveillance they would be able to effectuate the arrest of the accomplice as well. A surveillance of defendant and his residence was instituted.

On January 2, 1979, Sergeant Morosky told Officer McSeveney and his partner, Sergeant Stein, that he had information that the defendant was going to commit a major robbery and that there would be another suspect in the robbery. He informed them that the defendant was to meet the other person at 8 o'clock in the morning of January 3, 1979, on Reseda Boulevard near the Ventura Freeway in the San Fernando Valley and that the two of them would rob a jewelry store in Santa Barbara. Morosky said that his informant had indicated that two handguns would be used and that defendant normally carried one of the weapons on the small of his back and probably would have the second weapon in a briefcase or a satchel. McSeveney contacted the surveillance team and informed them that the defendant was

armed and dangerous. They were made privy to all of the information related above and instructed to stop and arrest the defendant should he appear to be leaving the County of Los Angeles.

On the morning of January 3, Officer Brooks of the Los Angeles Police Department, a member of the surveillance team, set up a surveillance in the area of Reseda Boulevard and Ventura Freeway as instructed. In addition to Officer Brooks there were ten other officers and five or six police vehicles and a helicopter employed in the surveillance. Brooks and his partner, Sergeant Hagele, took their positions at 7 a.m. and commenced communications by radio with other surveillance team members.

Observing the defendant's automobile, Brooks watched defendant drive to a location on the north side of Irwin just east of Reseda Boulevard. Brooks watched defendant park and leave the automobile. Defendant was continuously looking back and forth, up and down the street, and from side to side. He then went to the rear of the vehicle, opened the trunk, and

removed a brown briefcase and, continuing to make careful observations of the area, entered an apartment building complex.

Approximately 10 to 15 minutes later defendant returned to the car, again looking up and down the street, and opened the trunk, replacing the brown briefcase therein. He then drove to the Ventura Freeway and entered proceeding westbound to the area of Chesebar. The surveillance team decided that defendant was about to leave the country, whereupon they stopped him. A black and white police unit displayed a red light, and defendant parked his vehicle on the shoulder in the center of the freeway. Defendant immediately emerged from the car, and Officer Brooks and other officers approached, displaying three or four handguns and at least one shotgun, all of which were pointed at the defendant. Complying with instruction, defendant lay prone on the center divider, where he was handcuffed, patted down, and informed that he was under arrest. He was then stood up against the center divider fence. By this time at least five or six police vehicles

and approximately ten to twelve officers had gathered.

Brooks looked into defendant's vehicle and observed in plain view a police call scanner, as well as narcotic paraphernalia, including two small vials such as frequently contain various narcotics. Officer Brooks concluded that the paraphernalia was a "hype" kit and that the vials and bottles contained controlled substances. Brooks took the keys to the vehicle from defendant and opened the car's trunk. There he observed a large scanner for picking up police calls and the brown briefcase. There were also two other bags in the trunk, together with a raincoat, two other hats, four or five halloween-type masks with tape over the eyeholes, and a scanner copmany manual entitled "Police Frequencies." Officer Brooks opened the briefcase and the other bags. Upon opening the briefcase he discovered a bag similar to a shaving kit which was unzipped and contained a gun. Another gun, ammunition, a holster, a sap, handcuffs, gloves, a flashlight, and a bandanna were found in the briefcase

itself. In the other bags he found a sledge hammer, miscellaneous clothes, and a brown cap.

ISSUES

Defendant contends (1) the officers did not have probable cause to arrest him; (2) Officer Brooks did not have sufficient probable cause to conduct a warrantless search of the trunk of his car; and (3) the search of the briefcase without a warrant was illegal.[1/]

DISCUSSION

I

Contrary to defendant's contention, the evidence introduced at the 1538.5

[1/] Although defendant also contends that defendant did not consent to the search of his vehicle and that the plain view obstruction of the narcotics paraphernalia did not justify the trunk search, we do not deal with these issues as they are conceded by the People.

hearing amply supported the trial court's determination that probable cause existed for his arrest without a warrant. In a 1538.5 hearing, the trial court sits as the trier of fact. It is the role of the reviewing court only to measure the facts, as found by the trier, against the constitutional standard of reasonableness. (People v. Lawler (1973) 9 Cal.3d 156, 160.) Probable cause to arrest without a warrant is based upon the facts known to the officers at the time of the arrest. (People v. Lara (1967) 67 Cal.2d 365, 373-374, cert. den., 392 U.S. 945.) The standard is whether ". . . a man of ordinary care and prudence would be led to believe and conscientiously entertain an honest and strong suspicion that the accused is guilty. [Citations.]" (People v. Cockrell (1965) 63 Cal.2d 659, 665, cert. den., 389 U.S. 1006.)

McSeveney's belief that Ruggles may have been connected with the Nutel robbery was substantiated by information he obtained from the employees of the Nutel Motel.

As a result of information obtained by

McSeveney's investigation and Carragher's identification of defendant, the police had reasonable cause to believe that Ruggles had participated in the Nutel robbery and probable cause to arrest him. Although defendant argues that there was a delay of over a month from the time the officers had probable cause to the time of defendant's arrest, he has presented no facts from which it can be concluded that the probable cause to seize him had become stale. The arrest without a warrant was not offensive to defendant's constitutional rights. (United States v. Watson (1976) 423 U.S. 411, 423-424.)

II

Defendant next contends that the search of the trunk of his car at the time of his arrest was invalid.

Searches conducted outside the judicial process are per se unreasonable, subject to a few specific exceptions. (Katz v. United States (1967) 389 U.S. 347, 357.) It is the burden of the People to show that the search falls within one

of those exceptions. (People v. Minjares (1979) 24 Cal.3d 410, 416, cert. den., 444 U.S. 887.) The warrantless search of the trunk of defendant's car in the case at bench was justified under the "automobile exception" to the warrant requirement. This exception allows the police to conduct a warrantless search of an automobile where there is probable cause, and exigent circumstances make it impracticable for the police to obtain a warrant. (Chambers v. Maroney (1970) 399 U.S. 42, 48-51.)

The automobile exception is applied where the seizing officer has probable cause to believe that the contents of the automobile offend against the law. (Carroll v. United States (1925) 267 U.S. 132, 155-156, 158-159.) This requirement is satisfied in the case at bench because the evidence disclosed that immediately prior to defendant's arrest the officers received a second tip from the original informant saying that defendant was planning another crime and had two handguns in his possession. Police are entitled to rely on such information when

it is shown that both the informant and his information are reliable. (Aguilar v. Texas (1964) 378 U.S. 108, 114-115.) In the present case police were entitled to conclude that the informant was reliable because McSeveney had by independent investigation established that his first tip to the police was true. Furthermore, the informant's information was shown to be reliable because it was corroborated by other facts, sources, or circumstances. (People v. Lara, supra, 67 Cal.2d 365, 374-375.) The presence of the defendant at the rendezvous location at the correct time, the fact that he was seen taking the brown briefcase out of the trunk and later returning it to the trunk, and the fact that it appeared defendant planned to commit a crime in Santa Barbara because he was apprehended driving out of Los Angeles County westbound, all corroborated the tip in its essential facts. Independent corroboration occurred through the officers' observation of Ruggles' suspicious behavior -- continuous surveying of the street while he was removing and carrying the briefcase and

again when he returned it to the trunk of his car. Such corroboration provided the officers with reasonable grounds to believe that the informant was telling the truth and probable cause for the police to believe that the attache case in the trunk contained a gun.

Defendant argues, however, that there were no exigent circumstances in this case (Chambers v. Maroney, supra, 399 U.S. 42, 51) because the car was at the time of the search within the exclusive control of the police. Nonetheless, due to the inherent mobility of the automobile, various automobile searches have been upheld where no immediate danger was presented. (South Dakota v. Opperman (1976) 428 U.S. 364, 367.) If the police have to take the time to get a warrant to search every car on the highway, they run the risk that the vehicle may be moved out of the locality or the evidence destroyed. (Carroll v. United States, supra, 267 U.S. 132, 153.) The fact that the occuparts of the automobile have already been arrested does not negate the exigent circumstance. (See Chambers v. Maroney, supra, 399 U.S. 42,

44, 52.)

Despite Ruggles' arrest, his car was still a fleeting target, it was on an open highway, and there was a possible confederate waiting to remove the evidence. (See Coolidge v. New Hampshire (1971) 403 U.S. 443, 460.) There had been no earlier opportunity to gain a warrant because the car had been under constant police surveillance; and now that it was seized, there was no constitutional difference between searching it or holding it until a warrant could be obtained. (Chambers v. Maroney, supra, 399 U.S. 42, 52.) Consequently, the search of the trunk of the car without a warrant was valid under the automobile exception.

III

Defendant's final contention is that the officers illegally searched the briefcase. This was also the issue which defendant presented to the United States Supreme Court. After reviewing Robbins v.

California (July 1, 1981)* 453 U.S. ___, we conclude that the search of defendant's briefcase was illegal.

Noting the proliferation of litigation revolving around the principles limiting the search incident to a lawful arrest, the Supreme Court in New York v. Belton (July 1, 1981)** 453 U.S. ___, took note of criticisms which have been leveled concerning sophisticated rules which must be followed by police in their day-to-day work. The court noted the importance of establishing a single familiar standard which could guide police officers in the pursuit of their duties. Noting that no such rule has emerged from the litigated cases respecting the question of the search of an automobile, the court in Belton held that when there has been a lawful arrest of an occupant of an automobile, the officer or officers may contemporaneously with that arrest, search

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*Advance Report Citation: 49 U.S.L. Week 4906.

**Advance Report Citation: 49 U.S.L. Week 4915.

the passenger compartment of the automobile. The court further held that upon making such a search, the police may also examine the contents of any containers found within the passenger compartment. The court stated, "Such a container may, of course, be searched whether it is open or closed, since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have." (Id., at p. ___.)

That the Supreme Court did not include in its new rule a provision for searching the trunk of an automobile or a container within the trunk, is made abundantly clear by the fact that Robbins v. California, supra, was decided the same day as Belton. Robbins involved the search of the "trunk" of a station wagon. Actually because of the construction of the vehicle, the area in question is a recessed luggage compartment reached after opening the tailgate of the station wagon. This search was instituted after highway patrol officers had stopped petitioner's car

after observing erratic driving. After Robbins had alighted from his vehicle, the officers in patting him down discovered a vial of liquid. They also smelled marijuana smoke coming from the automobile, searched the passenger compartment and found marijuana, as well as paraphernalia for using it. At that point Robbins was arrested, and, searching the luggage compartment, the officers found a tote bag and two packages wrapped in green opaque plastic. Opening the packages, they discovered blocks of marijuana.

After affirmance of Robbins' conviction by the Court of Appeal, the Supreme Court granted a writ of certiorari, vacated the Court of Appeal's judgment, and remanded the case for further consideration in light of Arkansas v. Sanders (1979) 442 U.S. 753. On remand, the Court of Appeal again affirmed, holding that the trial court ". . . could reasonably [have] conclude[d] that the contents of the packages could have been inferred from their outward appearance, so that appellant could not

have held a reasonable expectation of privacy with respect to the contents." (People v. Robbins (1980) 103 Cal.App.3d 34, 40.)

The Supreme Court again granted certiorari "Because of continuing uncertainty as to whether closed containers found during a lawful warrantless search of an automobile may themselves be searched without a warrant. . . ." (Robbins v. California, supra, 453 U.S. ___.) The lead opinion in Robbins was delivered by Justice Stewart and three justices concurred therein. A fifth justice, Justice Powell, concurred in the judgment with opinion. The Chief Justice concurred in the judgment.

The opinon by Justice Stewart rejected the contention that the "automobile exception" (Carroll v. United States, supra, 267 U.S. 132) warranted the search of the green plastic bag. The opinion pointed out that it had been determined in United States v. Chadwick (1977) 433 U.S. 1 that the automobile exception is confined to a special, possibly unique circumstances which were the occasion of

the rule's genesis. Chadwick held that although cars and luggage might both be characterized as being mobile, luggage itself is subject to being taken and kept under the control of the police. Also, the inherent mobility of an autombile is not the only justification for the automobile exception, since warrantless searches have been approved by the court even in cases where the automobile's mobility was irrelevant. The other factor giving rise to the automible exception is the ". . . diminished expectation of privacy which surrounds the automobile," (id., at p. 12) which arises from the fact that a car is used for transportation and not as a residence or repository of personal effects; that a car's occupants and contents travel in plain view; and that automobiles are necessarily highly regulated by government. (Id., at pp. 12-13.) The opinion of Justice Stewart in Robbins then held that there is not any diminished expectation of privacy regarding luggage and that ". . . on the contrary, luggage is typically a repository of personal effects, the

contents of closed pieces of luggage are hidden from view, and luggage is not generally subject to state regulation." (Robbins v. California, supra, 453 U.S. ___.) The court rejected the argument that the contents of a closed container which is placed in a vehicle are not fully protected by the Fourth Amendment. Justice Stewart pointed out that the Fourth Amendment protects people and their effects, and it makes no difference whether the effects are "personal" or "impersonal." The criteria used to render the contents immune from a warrantless search is the type of container and if the container is closed and opaque, there is manifested thereby an expectation that the contents will be secure from examination. The court stated, "Once placed within such a container, a diary and a dishpan are equally protected by the Fourth Amendment." (Id., at p. ___.) The opinion noted that the fact that some containers by their very nature disclose their contents or at least create an inference thereof from their outward appearances are the kind of exceptions

which prove the rule.

The court in Robbins, as it did in Belton, supra, 453 U.S. ___, expressed a desire to establish a rule which would be easy to apply and not riddled with exceptions. As the opinion was signed only by a plurality, it apparently did not succeed in establishing such a rule. Nevertheless, the holding is not to be disregarded as is suggested by the Attorney General. Justice Powell in his opinion specifically agreed that the situation in Robbins must be distinguished from Belton because in Belton the court established a "bright line" rule which permits the interior or passenger compartment of a vehicle and containers found therein to be searched without a warrant where there has been an arrest of the occupant of the vehicle. Insofar as the plurality opinion in Robbins establishes a new "bright line" rule, Justice Powell would not join because he couldn't assume that the police had probable cause to search the whole automobile as the plurality did. Justice Powell maintained that Robbins was a

"container case." However, he noted that both Chadwick, supra, 433 U.S. 1, and Sanders, supra, 442 U.S. 753, require a warrant to search a container when it is either one that generally is used for personal effects or is sealed in such a manner as to manifest an expectation of privacy. Justice Powell wrote, "I nevertheless concur in the judgment because the manner in which the package at issue was carefully wrapped and sealed evidenced petitioner's expection of privacy in its contents." (Robbins v. California, supra, 453 U.S. ___.)

If a package wrapped in green opaque plastic material may not be opened without a warrant even if it is found during the course of the lawful search of an automobile, then, a fortiorari, a briefcase, such as we have in the instant case, may not be opened even though found during the course of the lawful search of an automobile. It can scarcely be argued that a briefcase is not generally "a repository of personal effects."

Assuming, arguendo, that Justice Powell distinguished Robbins from Belton

because Robbins was a "container case" rather than an "automobile case" and that thus we are not bound by Robbins because the case at bench is an "automobile case," we are nevertheless governed by the holding in People v. Minjares, supra, 24 Cal.3d 410.

In Minjares the police stopped a car because of information linking the car and its occupant to a robbery. After arresting the driver and searching the passenger compartment, the police opened the trunk and found a tote bag, which they searched. The court held that under Chadwick v. United States, supra, 433 U.S. 1, the search was illegal. "The principles underlying Chadwick--and the Fourth Amendment--are not altered because the luggage in this case was found in the course of a search of an automobile. . . . '[t]he word "automobile" is not a talisman in whose presence the Fourth Amendment fades away and disappears.' [Citation.]" (People v. Minjares, supra, 24 Cal.3d 410, 420.) The facts in Minjares cannot be distinguished from the case at bench.

There are, of course, exceptions which

would permit the arresting officers to search a container such as the briefcase herein; however, it is not argued that the opening of this briefcase was incident to a lawful arrest. (See Chimel v. California (1969) 395 U.S. 752.)

The People do, however, argue, and our dissenting colleague agrees, that in this case the search was justified by exigent circumstances (Arkansas v. Sanders, supra, 442 U.S. 753). Recognizing, of course, that the doctrine of exigent circumstances is well established and well reasoned, we are unable to discern any such circumstances in this case. The briefcase in question was hardly within the "immediate control" of the respondent at the time of the search. Although footnote 11 in Arkansas v. Sanders, supra, 442 U.S. 756, 763-764, states that exigencies will depend upon the probable contents of the luggage, this should not be taken as meaning that mere prior knowledge of the probable nature of such contents will justify the search. In both Sanders and Chadwick, supra, 433 U.S. 1, the officers had prior information concerning the

contents of the containers therein involved. It is only when the officers have knowledge of the probable contents and probable cause to believe that the contents of the container are in and of themselves inherently dangerous that the need to obtain a warrant is dissipated. The briefcase had been reduced to the exclusive custody of the police, and there were no grave circumstances justifying the officer in substituting his judgment for that of a magistrate in determining the existence of probable cause for the search. The exigent circumstances justifying the search of the trunk were eliminated once the trunk was opened and the contents were reduced to the possession of the police. (People v. Minjares, supra, 24 Cal.3d 410.)

Finally, the People suggest (and our learned dissenting colleague seems to accept) that the warrantless search may be justified on the theory of an "accelerated booking search." In People v. Bullwinkle (1980) 105 Cal.App.3d 82, the court justified the search of the arrestee's purse when the arrestee took it with her

to the police station after having been arrested. After arriving at the police department, the officers searched the purse and discovered incriminating evidence. The Bullwinkle court held that a person who is under arrest and subject to being booked into jail must yield to a search of his or her personal effects. The court correctly held that booking searches traditionally extend to a purse. The court noted, ". . . [P]urses and wallets are entirely different from automobiles. The contents of automobiles 'may be readily and adequately protected by locking the vehicle.' [Citation.] The contents of purses and wallets, on the other hand, are easily susceptible to theft since purses and wallets cannot normally be locked. [Citation.]" (Id., at p. 89.) There was absolutely no necessity to search the briefcase in the case at bench during the booking of the defendant. On the contrary, the briefcase itself could have been secured while awaiting a decision by a magistrate as to whether to issue a warrant. "Once a closed container comes under an officer's

exclusive authority, an immediate search is no longer necessary. Thus probable cause to believe the item contains contraband or evidence of a crime can support at most the seizure of the item; but a warrant must be obtained for its search. [Citations.]" (People v. Minjares, supra, 24 Cal.3d 410, 423, fn. omitted.)

Our dissenting colleague also opines that the search herein should be justified on the basis of inevitable discovery. The inevitable discovery doctrine enunciated so cogently in People v. Superior Court (Tunch) (1978) 80 Cal.App.3d 665, is but a corollary of the "poison fruit" doctrine, i.e.: The constitutional compulsion to exclude evidence discovered as a result of official misconduct is logically limited to such evidence as would not have been discovered in the ordinary course of investigatory events. To now stretch the doctrine of inevitable discovery to the point where a warrantless search can be justified on the ground that a search warrant would have been "inevitably" issued had it been sought is not only

sophistry, but would constitute a practical repeal of the Fourth Amendment. Such reasoning requires a retroactive evaluation of a non-existent affidavit presented to an imaginary magistrate, all of which must then be reviewed at a subsequent hearing by employing mere speculation.

Although we do agree that given the facts in the case at bench, the officers almost certainly would have been provided a warrant had they bothered to apply for such, this fact cannot be considered as justification for not making the effort to obtain the warrant. (United States v. Chadwick, supra, 433 U.S. 1, 15.)

The order denying the motion to suppress the evidence of the contents of the briefcase is reversed. The matter is remanded. The court is directed to enter its order suppressing the evidence discovered from the search of the

briefcase. The judgment of conviction is reversed. A new trial is ordered.

CERTIFIED FOR PUBLICATION.

DALSIMER, J.

I concur:

SPENCER, P.J.

DISSENTING OPINION OF HANSON (Thaxton), J.

I respectfully dissent.

In order to make the discussion portion of this dissent more meaningful, I feel it is necessary, although somewhat repetitious of the majority opinion, to retrace in more detail the procedural history. Also in order to breathe a little life and realism into an otherwise sterile case, an expansion of the factual background is deemed warranted.

PROCEDURAL HISTORY

On February 2, 1979, by way of a two-count information defendant Ruggles was charged with the robbery of John Carragher on July 24, 1978, using a 9 millimeter automatic pistol (count I) and with possession of a firearm by an ex-felon on January 3, 1979, in violation of Penal Code section 12021.[1/]

1/ Unless otherwise indicated, all statutory references are to the Penal Code.

An amendment to the information alleges that defendant Ruggles suffered six prior felony convictions for which he served time in state prison, namely: (1) and (2) convicted of conspiracy and robbery in the first degree, felonies, in the County of Los Angeles, State of California, on May 16, 1962; (3) convicted of robbery in the first degree, a felony, in the County of Los Angeles, State of California, on April 3, 1969; (4) convicted of robbery in the first degree, a felony in the County of Santa Clara, State of California on April 3, 1969; (5) convicted of the crime of escape from custody, a felony, in the County of Santa Clara, State of California, in violation of section 4532b on October 3, 1969; and (6) convicted of assault with a deadly weapon, a felony, in violation of section 245. Each of the foregoing prior alleges that in each of the above listed felonies that he committed an offense resulting in a felony conviction during a five-year period subsequent to the conclusion of said term within the meaning of section 667.5, subdivision (b).

On February 5, 1979, defendant with court appointed counsel pleaded not guilty as charged.

On February 27, 1979, defendant denied the alleged six prior felony convictions and made a motion to suppress evidence pursuant to section 1538.5. The People moved to have the instant case (No. A347889) consolidated with case number A348227.[2/]

[2/] Pursuant to California Rules of Court, rule 12(a), I augmented the record by ordering up the superior court file on case No. A348227 for review.

In this case defendant Ruggles was charged with robbery in violation of section 211 on November 30, 1978, and use of a handgun within the meaning of sections 12022.5 and 1203.06, subdivision (a)(1).

The reporter's transcript of the preliminary hearing conducted on February 9, 1979, contains the testimony of the victim, Teresa Romero, who stated

Footnote 2 continued

On March 29, 1979, defendant's motion to suppress pursuant to section 1538.5

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that on November 30, 1978, she was the manager of a 71-unit apartment complex in Glendale, California; that at about 12 o'clock noon two men came inquiring about renting an apartment; that one of the two men was defendant Ruggles; that defendant Ruggles who was the bigger of the two and wearing gloves pulled out a gun from his waistband; that the smaller man told her in Spanish he wanted money and told her to lie down on the floor; that when she refused, she was told to sit in a chair; defendant Ruggles took $150 deposit money kept in a box on the shelf behind the desk and then searched the premises; that they taped her into a chair; and that after the two men departed she freed herself and called the police.

Victim Romero stated that defendant Ruggles had long reddish brown hair and wore a moustache; that she identified defendant Ruggles from a series of

Footnote 2 continued

was heard and denied. The evidence consisted of pages 4 through 32 of the preliminary hearing transcript (to be considered by the court pursuant to stipulation of the parties) and the additional testimony of prosecution witnesses Robert G. McSweeney and Jerry Lee Brooks and the testimony of defendant Ruggles limited to the motion to suppress.

On the same date, following denial of defendant's motion to suppress evidence, and pursuant to a negotiated plea, defendant withdrew his not guilty plea and pleaded guilty to count I (robbery), admitted the use allegation pursuant to section 12022.5 and admitted three of the six prior convictions.

Thereafter defendant Ruggles waived a probation report and requested immediate sentencing. He was sentenced to state

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photographs shown to her by the police at a later date and also at the time of the preliminary hearing made an in-court identification of defendant Ruggles as being the taller of the two men who robbed her on November 30, 1978.

prison for a total of nine years which could be served in any federal or state penal institution and said sentence to be served concurrently with any term the defendant may currently be serving.

On the People's motion, apparently in accordance with the plea bargain, the court, "in the interest of justice," dismissed count II of the instant case (No. A347889); dismissed three of the alleged priors which were not admitted; and dismissed the single robbery count in case No. A348227. (See fn. 2, ante.)

On April 11, 1979, defendant Ruggles filed his notice of appeal and appellate counsel was appointed at public expense.

On June 16, 1980, this court filed its opinion holding that defendant's section 1538.5 motion was properly denied and affirming the judgment of conviction.

On August 13, 1980, the California Supreme Court, in Bank, denied defendant Ruggles' petition for a hearing with Chief Justice Rose Bird voting to grant the petition.

On November 6, 1980, defendant filed a petition with the United States Supreme

Court seeking to proceed in forma pauperis and for a writ of certiorari.

The sole question presented to the United States Supreme Court in defendant's petition for a writ of certiorari before that Court was as follows: "Was the warrantless search of petitioner's briefcase, while it was under the exclusive control of the police, invalid thereby necessitating the granting of petitioner's motion to suppress?"

On July 2, 1981, the United States Supreme Court granted defendant Ruggles' petition to leave to proceed in forma pauperis and his petition for writ of certiorari. The clerk of the Court advised this court that "[T]he judgment is vacated and the case is remanded to the Court of Appeal of California, Second Appellate District, for further consideration in light of Robbins v. California, 453 U.S. ___ (1981."*

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*Advance Report Citation: (July 1, 1981) 49 U.S.L.Week 4906.

FACTS

THE PRELIMINARY HEARING:

The testimony of John Carragher contained in the reporter's transcript of the preliminary hearing (pp. 4-32) conducted on January 18, 1979, and considered by the superior court at the 1538.5 hearing on the motion to suppress pursuant to stipulation was substantially as follows:

Witness John Carragher testified that on July 24, 1978, while a manager of the Nutel Motel in Los Angeles he was robbed; that about two weeks prior to the robbery defendant Ruggles came to the motel and represented that he was a police officer with the Treasury Department and presented a badge; that the defendant said he was on "a narcotic bust" involving room 122 and wanted some information; that it was not unusual for police to come seeking information with problems involving the motel and he (Carragher) cooperated with defendant; and that this first contact with the defendant laster about ten minutes.

Victim Carragher further testified that on July 24, 1978, defendant Ruggles reappeared at the motel. Debbie Doan, the PBX operator, called to Carragher who was in his office and said "this police officer is out here to see you". Mr. Carragher said to "come right in" whereupon two men entered his office, the taller of the two being defendant Ruggles whom he had talked to several weeks before and represented himself as a police officer; that after the two men were in his office the defendant said he had brought some photographs which he (defendant Ruggles) had referred to during his previous visit; that Ruggles introduced him to his partner and as Carragher reached out to shake his hand defendant Ruggles pulled an automatic pistol out of his coat and said: "If you don't keep quiet, I will blow your fucking head off"; that since it was after the holidays there was about four days' receipts amounting to approximately $5,000 in cash and checks on his desk; that defendant Ruggles ordered him to open the safe and defendant took a bank, some bills

and an envelope containing Japanese yen and money orders; that Carragher was handcuffed with his hands behind his back and told to get on the floor on his knees where his legs were tied and Ruggles' partner stuffed cotton in his mouth and sealed it with tape; that the robbers were in his office a total of about 10 minutes and when they left they put his coat over his head and told him not to make any noise for at least 10 minutes.

Witness Carragher made a tentative identification of Ruggles from a series of mug shots as the person who posed as a police officer and robbed him on July 24, 1978. The witness also identified defendant Ruggles in a subsequent lineup and from the defendant's passport photograph. The person who was with defendant Ruggles was a Latin of stocky build and much shorter than Ruggles with a pock-marked face.

THE MOTION TO SUPPRESS HEARING:

Police officers Robert G. McSeveney and Jerry Lee Brooks and defendant Ruggles

were the only witnesses to testify at defendant's motion to suppress evidence pursuant to section 1538.5 on March 29, 1979. Their testimony is substantially as follows:

Witness Robert G. McSeveney, assigned to the robbery-homicide division of the Los Angeles Police Department with 24 years experience, testified that in the latter part of November 1978 he received information from Sergeant Morosky of the intelligence division that Sergeant Morosky had received information from an informant that defendant Ruggles, a parolee who had been in prison for armed robbery, was living in the San Pedro area of Los Angeles at 566 West 7th Street, was driving a black over red Mercury Montego and was pulling robberies in the Los Angeles area and that Ruggles had been involved in a motel robbery in Los Angeles accompanied by a male Latin and had used a blue steel automatic and handcuffs in the commission of the robbery.

Officer McSeveney testified that based upon the information from Sergeant Morosky he checked with the records division and

came up with a "David Wendell Ruggles who had been arrested and had been in prison for robbery, had been paroled to the County of Los Angeles". The records disclosed a description of Ruggles as "a male, Caucasion, approximately 38 or 39 years old, he was over six feet tall, weighed over 200 pounds, and had reddish hair." Officer McSeveney then pulled what is called "a police package" which showed "a series of arrests and the nature of the crimes which Ruggles had been processed for in the past". Having been advised by Sergeant Morosky that the informant had said Ruggles had been involved in a motel robbery, Officer McSeveney checked police records for current outstanding robberies in the Los Angeles area including all hotel-motel robberies with Caucasian suspects and came up with the Nutel Motel on West 3rd Street.

Officer McSeveney also talked to other local law enforcement officers concerning incidents defendant Ruggles had been involved in in Los Angeles and talked to investigators in other jurisdictions. He was advised that defendant Ruggles two or

three times prior to the Nutel Motel robbery had posed as a state narcotics officer and showed a badge; that in the City of Orange during an aborted robbery attempt in a restaurant in which defendant was shot, he (Ruggles) posed as a law enforcement officer from the treasury department checking out possible counterfeit money.

Thereafter Officer McSeveney obtained a booking photograph of Ruggles from prior arrests and convictions and driver's license photograph and prepared a photo lineup card which included Ruggles' photograph which he took to the Nutel Motel. There Carragher identified Ruggles and at that time the officer believed he had probable cause to arrest Ruggles for the robbery of the motel.

The officers did not arrest defendant Ruggles immediately because they were still attempting to identify the second suspect in the robbery. The information collected on Ruggles was given to the surveillance unit which had a helicopter surveillance on his San Pedro residence in an effort "to identify the second suspect

or the person that he was running with at the time".

On January 2, 1979, Officer McSeveney and his partner Sergeant Stein were informed by Sergeant Morosky of intelligence that the same informant said Ruggles "was going to pull a major robbery, probably the following day" (Jan. 3, 1979). The informant indicated there were to be two people on the robbery and he was to pick up the second suspect near Reseda Boulevard and the Ventura Freeway and to rob a jewelry store in Santa Barbara. Officer McSeveney stated that the information from the informant was "that there would be two handguns used, one being a blue steel automatic. He also indicated that Mr. Ruggles normally would carry one of the weapons in the small of his back, and that he would probably have the second weapon in a briefcase or satchel with him." The information also was to the effect that Ruggles was armed and dangerous and was involved in two shoot-outs--one in Orange County and one in Beverly Hills.

The foregoing information was

communicated to the surveillance team who were to conduct surveillance the following morning (Jan. 3, 1979) with instructions that if Ruggles was leaving the County of Los Angeles he was to be stopped and arrested. Officer McSeveney was not present when defendant Ruggles was arrested.

Witness Jerry Lee Brooks, who had 18 years experience with the special investigation section of the detective investigative support division of the Los Angeles Police Department, was with the team surveilling defendant Ruggles on the morning of January 3, 1979.

Officer Brooks testified that before starting the surveillance other officers gave him a description of the defendant, the vehicle he would be driving with the license number and told him that defendant Ruggles had a prior criminal record and had probably been involved in numerous robberies in the Los Angeles County area and previously was involved in a specific motel or hotel robbery. Officer Brooks stated that he was told "That he usually carried two handguns, one being carried in

the small of his back area, and the other, usually carried in a brown attache case. [¶] And when the second gun that he carried in the small of his back, when it was not there, was always carried in a brown attache case. [¶] That he and another individual or other individuals had been involved in these robberies, or several robberies. [¶] That he may be or was in the process or may be preparing to commit another robbery. [¶] And that he would be in the area of Reseda Boulevard and Ventura Freeway on that particular date, or thereabouts. [¶] I was also informed that if he should leave, or during this surveillance, if it appeared that he was attempting to leave the County of Los Angeles, that he should be taken into custody on robbery charges."

Officer Brooks further testified that at about 7 a.m. on January 3, 1979, in an unmarked police vehicle along with other police vehicles surveillance of defendant was set up in the vicinity of Reseda Boulevard and the Ventura Freeway in the San Fernando Valley; that he observed defendant Ruggles in the red Cougar with

license number described drive northbound onto Reseda Boulevard from the Ventura Freeway off ramp; that he (Officer Brooks) followed the defendant and saw him make several turns on surface streets and then park at the curb.

Officer Brooks then observed "The defendant, who was the driver, exited the vehicle. And as he exited the vehicle, he continuously looked up and down the street, back and forth, from one side of the street to the other, in all directions, . . .; that "He then walked to the trunk area of the vehicle. And he was still looking around. He opened the trunk. He removed a brown attache case, closed the trunk, continued looking in different directions, walked southbound and into an apartment building complex which is located on the southeast corner of Reseda and whatever that street is"; that defendant was in the apartment complex for 10 to 15 minutes and he (Officer Brooks) saw "He exited the apartment building complex and walked towards the car, once again looking up and down the streets, or in different

directions, went to the trunk of the vehicle, opened the trunk, placed the briefcase in -- the same briefcase in the trunk of the vehicle, closed it, got into the vehicle, drove it off, westbound on Reseda to, I mean, westwound [sic] towards Reseda and then southbound on Reseda towards the freeway."

Officer Brooks further testified that he earlier had received information specifically in respect to the attache or briefcase. "That at least one of the guns that the defendant had was kept in that particular briefcase, and when he was not carrying the other gun that he usually carried in the small of his back, it was also in the briefcase."

Officer Brooks followed defendant who first stopped in a gas station for a few minutes and then continued south on Reseda Boulevard to the Ventura Freeway and made a right-hand turn onto the on ramp of the Ventura Freeway westbound; that when it appeared defendant Ruggles was going to leave Los Angeles County area, defendant's vehicle was stopped and he was placed under arrest.

Officer Brooks stated the defendant's vehicle was traveling in the number one (fast lane) of the Freeway and a marked black and white police car with red lights on pulled up behind defendant's vehicle and it pulled into the center divider; that the following marked police vehicle pulled up behind defendant's vehicle followed by several other police vehicles pulled in behind the black and white while Officer Brooks pulled up in front of defendant's vehicle.

As soon as the defendant stopped, he immediately exited his vehicle and the officers ordered him to raise his hands and he complied. The defendant was then ordered to lay prone on the center divider area and he was patted down, handcuffed and informed he was under arrest; that the defendant was then stood up against a chainlink fence in the middle of the freeway center divider. Officer Brooks peered into defendant's vehicle from the outside and stated that "In the backseat I could see, in plain view, what is commonly referred to as a hype kit or syringe and needle. And I believe there

was [sic] two of them. But I could definitely see one complete syringe and needle. [¶] And there was two vials or little vials of some type, or the type that I have seen in the doctor's office, that contain various types of narcotics. Had a label on the outside. Small label. There was also a large liquid container with tinfoil around it laying on the backseat. . . . First thing I observed, or, back up a bit, when I peered into the vehicle, I observed a small hand-held scanner, commonly known as a scanner, which picks up police calls, in the front seat of the vehicle."

The officer testified he had four or five years experience in narcotics and formed the opinion "That the needle and syrine was -- a needle and syringe, commonly known as hype kit, and the vials were vials that contained some type of liquid narcotics or tranquilizer. But it is the particular type of bottle not normally dispensed over the counter, like if you would buy it from a pharmacy. [¶] Q Did you believe the items were controlled substance? [¶] A Yes."

Officer Brooks asked Ruggles if he could search the trunk. The defendant said: "Shit, I don't care. Go ahead." Officer Brooks went to defendant's car and looked in the ignition but the key wasn't there and Ruggles then either took it out of his pocket or was still holding it in his hands and opened the trunk.

When Officer Brooks opened the trunk, he observed "a large, approximately 18 inches by 11 inches by 3 or 4 inches, what is called a Bearcat scanner, which picks up police calls. It has a wide-range of different frequencies. . . . sitting right next to the brown briefcase." In addition, there was "The brown briefcase. There was another brown bag. I believe there was an overcoat. There was a change of clothes of some type. [¶] There were other items in the trunk of the vehicle. I can't recall which particular item was in the briefcase and which item was laying scattered about the trunk. But there were also masks, halloween-type masks with tape over the eyeholes, four or five of those. Handcuffs, a sap, a brown or stocking knit-type cap. Numerous other -- on,

there was a manual that is produced or put out by, I believe, one of the scanner companies that said, 'Police Frequencies,' which gave all the police frequencies that could be picked up on these particular scanners throughout the Southern California or local area."

Officer Brooks, who opened the tan briefcase assisted in preparing an itemized property report, stated that the briefcase contained "Both guns, the ammunition, the holster, sap, handcuffs, some of the gloves. There were quite a few gloves. Flashlight, a bandanna, I think the -- I said handcuffs and a sap. [¶] Q Those items were in the briefcase; is that correct? [¶] A Yes."

Officer Brooks also opened two duffel type bags in the trunk besides the briefcase. In one bag "was a hammer, or about a three-foot sledge-type hammer, miscellaneous clothes in the one bag. There were three hats found in the car, or two hats and a knit cap.

Officer Brooks removed the unlocked briefcase from the trunk and opened it by releasing "a couple of catches". One of

the guns was in an unzipped shaving-type case.

Defendant Ruggles testified only as to the events surrounding his arrest. He stated that around 8 o'clock on January 3 he was driving westbound in the number one (fast) lane of the Ventura Freeway when a police car came up behind him with its red lights on; that he pulled into the center divider and stopped and got out and an officer with a shotgun said: "Put your hands in the air and lay on the ground"; that he (Ruggles) hesitated not more than two seconds and the officer said: "Or I'll blow your fucking head off"; that the officers rushed in and put his arms behind him; that an officer said: "It is lucky that you didn't make a move towards your coat"; that one officer said: "Can I look in your car?" and he (Ruggles) said: "Shit, you are going to do what you want to do anyway" and an officer yanked the keys from his hand. Defendant Ruggles denied that he gave the officers consent to go into the trunk of his car.

The parties having rested, argued and submitted the matter, the trial court

denied defendant's motion to suppress finding that the officers had probable cause to arrest defendant Ruggles and therefore the right to stop his vehicle; that the narcotics paraphernalia inside the vehicle observed through the window was in plain view and subject to seizure; and that although defendant did not voluntarily consent to the search of the trunk since any such consent constituted a submission to the assertion of authority, the officers were nevertheless justified in searching the trunk and the briefcase and bags therein since there was a definite nexus between the information known to the police officers and the contents thereof consisting of weapons and other possible instrumentalities of crime.

DISCUSSION

I agree with the majority opinion (1) that the police officers had probable cause to arrest defendant Ruggles and (2) that they had probable cause to conduct a warrantless search of the trunk of his car.

However, I disagree with that portion of the majority opinion which concludes that a reversal is necessary because "the search [opening] of defendant's [unlatched] briefcase [at the scene of the lawful arrest] was illegal."

It should be noted that the case at bench was remanded to this court for further consideration in light of the Robbins decision.

The Deputy Attorney General representing the People argued that the establishment of the "bright line" rule in Robbins is without force as precedent citing Eaton v. Price (1960) 364 U.S. 263, 264; North v. Superior Court (1972) 8 Cal.3d 301, 380; People v. McKinnon (1972) 7 Cal.3d 899, 911. He points to the fact that in Robbins the four justices forming the plurality of the court (Stewart, Brennan, White and Marshall, JJ.) expressly disagreed with Justice Powell while Justice Powell, who concurred in the judgment and filed an opinion, expressly disagreed with the plurality of the court on the requirement as to when a search warrant is necessary to search a

closed container found in the trunk or storage area of a car. (See 49 U.S.L.Week at pp. 4907, 4909.) Since Chief Justice Burger only concurred in the judgment while Justices Blackmun, Rehnquist and Stevens filed dissenting opinions, the issue raised by the plurality opinion in Robbins was in fact considered by an equally divided court, hence was not actually decided, and, therefore, "is without force as precedent." (Eaton v. Price, supra, 364 U.S. at p. 264; North v. Superior Court, supra, 8 Cal.3d at p. 308; People v. McKinnon, supra, 7 Cal.3d at p. 911.)

The majority opinion in the case at bench apparently agrees that since the new "bright line" rule which was sought to be established by Justice Stewart was signed by only a plurality, it did not succeed. However, the majority opinion argues that the plurality holding should not be disregarded because of the language in Justice Powell's separate opinion.

Irrespective of the precedential weight to be given to the plurality in

Robbins,[3/] in my opinion the case at bench is not only markedly factually distinguishable from Robbins, but the warrantless search of the briefcase was justified in view of the exigent circumstances confronting the officers at the scene of the arrest and was in any event justified under the recognized and accepted doctrine of inevitable discovery.

The factual distinctions between Robbins and the instant case are glaring. In Robbins the California Highway Patrol stopped defendant Robbins' station wagon because he was driving erratically. When Robbins opened the car door to get his registration, the officers smelled

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[3/] As a matter of interest it is noted that if defendant Ruggles' parole agent had accompanied the police officers to the scene of the arrest, the agent, having been fully informed, would have been fully justified in making the search of the briefcase merely because of the parolee status of the defendant. (See People v. Natale (1978) 77 Cal.App.3d 568, 574.)

marijuana smoke. The officers in searching the passenger compartment found marijuana as well as equipment for using it. The officers opened the tailgate of the station wagon and located a handle set flush in the deck and lifted it to uncover a recessed luggage compartment where they discovered a tote bag and two packages wrapped in green opaque plastic. Upon unwrapping the packages, the police found that each contained 15 pounds of marijuana.

In the case at bench, unlike in Robbins where the officers stopped the defendant for operating his vehicle in an erratic manner, the officers stopped defendant Ruggles because they had probable cause to arrest him for the armed robbery of the Nutel Motel where he had posed as a law enforcement officer; was a parolee who had been convicted of numerous other armed robberies; and from a reliable informant had learned that he was on his way to rob a jewelry store in the Santa Barbara area and was leaving their jurisdiction.

It is of interest to note that the

plurality opinion in Robbins disposed of the argument that the officers were justified in opening the marijuana packages because "any experienced observer could have inferred from the appearance of the packages that they contained bricks of marijuana" by pointing out that the testimony of one of the arresting officers was somewhat obscure in that he had never seen such packages before but had heard contraband was packaged that way. The plurality stated that such vague testimony certainly did not establish that marijuana is ordinarily "packaged this way".

Here, the officers' testimony was not vague or obscure. They had reliable information that defendant Ruggles, according to the testimony of Officers McSeveney and Brooks, would have two handguns; that he (Ruggles) normally carried one in the small of his back and the other in a brown briefcase with him and if the one was not carried in the small of his back it was carried in the attache case with the other one. The officers had observed Ruggles a short time before his arrest on the Ventura Freeway

take a brown attache case, look around, enter an apartment building complex, return 10 to 15 minutes later, look around and put the brown attache case back in the trunk. The trial judge in denying defendant's motion to suppress the evidence found there was a definite nexus between the information known to the police and the contents consisting of weapons and other possible instrumentalities of crime.

The instant case does not require a reversal because the plurality's language in Robbins (49 U.S.L.Week at p. 4908) expressly acknowledges by implication that "the presence of any circumstances that would constitute a valid exception to this general Rule, . . ." is still cognizable even under Robbins.

(In our pre-Robbins court of appeal unpublished opinion filed June 16, 1980, unanimously concurred in by Hanson, J.; Lillie, Acting P. J.; and Radin, J.*, we held the existence of the exigent

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*Assigned by the Chairperson of the Judicial Council.

circumstances exception justified opening the briefcase and the opinion passed muster by the state Supreme Court since defendant's petition for a hearing before that court was denied.)

Officers may conduct a warrantless search provided the following two elements are satisfied: (1) exigent circumstances which render the obtaining of the warrant an impossible or impractical alternative and (2) probable cause exists for the search. (People v. Huff (1978) 83 Cal.App.3d 549.)

Here, there was probable cause for the search because the officers had knowledge that the probable contents of the brown attache case consisted of two handguns and probably other instrumentalities used in robberies already committed and being transported for use in a robbery of a jewelry store in Santa Barbara. While the briefcase may have been under the control of the police, the totality-of-the-circumstances includes the fact that the defendant was arrested in the center divider of a freeway with vehicles speeding by a few feet away at speeds in

excess of 55 mph. This locale necessitated quick action by the officers to confirm the presence of the dangerous weapons and to secure them. By merely flipping a finger, the police unlatched the unlocked catches and confirmed the presence of two guns, ammunition, a sap, handcuffs, flashlight and gloves in the briefcase. I would hold that the totality-of-the-circumstances constituted exigent circumstances rendering the obtaining of a warrant an impractical alternative.

The majority opinion also relies on the California case of People v. Minjares (1979) 24 Cal.3d 410, (Clark, J., dis.) as authority requiring a reversal. The Minjares case is factually distinguishable. In Minjares after the defendant was arrested, his vehicle was towed to a city-owned storage yard and there the officers picked the lock to gain entry. The Minjares court held that a warrant must be obtained for a search of a container found in the trunk unless exigent circumstances dictate an immediate search and suppressed the container's

contents. By contrast, the officers in the case at bench lawfully gained access to the trunk area at the time they apprehended defendant on the freeway. In view of the fact that officers had reason to believe Ruggles' briefcase contained weapons, clearly the exigent circumstances existed that justified the police flipping open the catches on the unlocked briefcase when they stopped defendant. These circumstances satisfied Robbins and the result does not run afoul of the principle set forth in Minjares.

In any event I would hold the "doctrine of inevitable discovery" applies.

The "doctrine of inevitable discovery" is discussed at length in People v. Superior Court (Tunch) (1978) 80 Cal.App. 3d 665, and is defined at page 673 as follows: "'Although typically any evidence obtained, even indirectly, through the illegal actions of police is inadmissible as "fruit of the poisonous tree," where the court finds that the challenged evidence would have been eventually secured through legal means

regardless of the improper official conduct, the inevitable discovery exception allows the evidence to be admitted. The doctrine was developed to prevent unjustly granting criminals immunity from prosecution.' (Novikoff, The Inevitable Discovery Exception to the Constitutional Exclusionary Rules (1974) 74 Colum.L.Rev. 88; fns. omitted.)"

The recent consolidated cases of People v. Bullwinkle (1980) 105 Cal.App.3d 82, point out that it is proper to search a defendant's purse in the course of booking defendant into the jail, stating at page 87: "[I]t has long been the rule that the police may search the person and the effects of a prisoner who is to be booked into jail, in order to prevent the introduction of contraband or weapons into the jail and in order to account for and safeguard the property taken from the prisoner. (United States v. Edwards (1974) 415 U.S. 800, 804-805 & fn. 6, 807 [. . .]; People v. Ross (1967) 67 Cal.2d 64, 70 [. . .]; [revd. on other grounds sub nom. Ross v. California (1968) 391 U.S. 470 (. . .)]; People v. Maher

(1976) 17 Cal.3d 196, 200-201 [. . .]; People v. Rogers (1966) 241 Cal.App.2d 384, 389 [. . .]; People v. Superior Court (Murray) (1973) 30 Cal.App.3d 257, 263 [. . .]; People v. Balassy (1973) 30 Cal.App.3d 614, 623 [. . .]; People v. Gilliam (1974) 41 Cal.App.3d 181, 189 [. . .]; People v. Remiro (1979) 89 Cal. App.3d 809, 835 [. . .]; Pen. Code, § 1412; Gov. Code, § 26640.)

"Where it is shown that a suspect would have been jailed and thus subject to a booking search, the fact that a thorough search of the booking type occurs prior to the actual booking process does not render the search illegal, since no additional or greater intrusion on the privacy of the suspect is involved. (People v. Barajas (1978) 81 Cal.App.3d 999, 1008-1009 [. . .]; People v. Flores (1979) 100 Cal. App.3d 221, 229-230 [. . .]; see People v. Superior Court (Simon) (1972) 7 Cal.3d 186, 208-209 [. . .]; People v. Longwill (1975) 14 Cal.3d 943, 948 [. . .]; People v. Brown (1979) 88 Cal.App.3d 283, 293 [. . .].)"

The court also stated at pages 88-89:

"[T]he purposes of a booking search include not only to prevent contraband and weapons from entering the jail, but also to account for the valuables and other property of the prisoner, which the police are mandated by statute to do. (Pen. Code, § 1412; Gov. Code, § 26640.) [4/] . . ."

4/ In a footnote at this point the court states:

"'When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant and the other of which he must forthwith file with the clerk of the court to which the depositions and statement are to be sent. When such property is taken by the police-officer of any incorporated

Footnote 4 continued

city or town, he must deliver one of the receipts to the defendant, and

In my opinion, it would not be unreasonable police conduct to have taken the "closed" but unlocked briefcase along with the other loose items found both in

---

one, with the property, at once to the clerk or other person in charge of the police-office in such city or town.'

"Government Code section 26640 provides: 'The sheriff shall take charge of, safely keep, and keep a correct account of, all money and valuables found on each prisoner when delivered at the county jail. Except when otherwise ordered by a court of competent jurisdiction, the sheriff shall pay such money or sums therefrom and deliver such valuables or portions thereof as the prisoner directs and shall pay and deliver all the remainder of his money and valuables to the prisoner or to his order upon his release from the jail or to his legal representative in case of his death or insanity.'" (Italics added.)

the car compartment and in the trunk, such as the hype kit, syringe and needle, the vials, the small hand-held scanner, the Bearcat scanner, the Halloween-type masks with tape over the eyes and the two duffel bags, with the defendant to the police station for booking. If this had occurred, the contents of the briefcase would have inevitably been disclosed at the time of booking at the police station during inventory as required by law and which did not require a search warrant.

The majority asserts that application of the inevitable discovery doctrine is based on "sophistry, [and] would constitute a practical repeal of the Fourth Amendment." Not so. It is a well established doctrine recognized by the courts of this state and the United States Supreme Court.

The doctrine of inevitable discovery was relied upon by the panel of this court in its pre-Robbins opinion filed June 16, 1980, which passed muster by the State Supreme Court in that it denied defendant's petition for a hearing.

Moreover, the United States Supreme

Court has not disapproved the "accelerated booking search" theory. (Bullwinkle v. California filed November 17, 1980) ___ U.S. ___,* involved an appeal challenging the conclusion in People v. Bullwinkle, supra, 105 Cal.App.3d 82, that an "accelerated booking search" of a purse of a felony-arrestee is constitutional despite the United States Supreme Court holding in United States v. Chadwick (1977) 433 U.S. 1. The United States Supreme Court dismissed the appeal "for want of a substantial federal question." (See Bullwinkle v. California, supra.) Dismissal of appeals for want of a substantial federal question constitutes a decision "on the merits" under Hicks v. Miranda (1975) 422 U.S. 332, 344-345.

Finally, there is not one word in the Fourth Amendment about "illegal" police activity. The operative word is "unreasonable". Only "unreasonable" police activity is prohibited. Where police officers in the discharge of their

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*Advance Report Citation: 49 U.S.L.Week 3371.

official duties "insur[ing] domestic tranquility" act "reasonably" in conducting searches and seizures there is no Fourth Amendment prohibition.[5/]

Reasonable minds may differ as to whether police conduct was reasonable or unreasonable under the totality-of-the-circumstances of any particular case. In view of the totality-of-the-circumstances of the instant case, as previously set forth, the police officers' conduct constituted good police work and was reasonably justified in all respects.

Hopefully, this case will wend its way back to the United States Supreme Court. In view of the retirement of Justice Stewart and the addition of a new member to the court, it may rethink the plurality

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5/ The Fourth Amendment provides, in pertinent part, that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, . . ." (Italics added.)

position in Robbins and adopt the positions expressed by Justices Blackmun, Rehnquist and Stevens in their dissents. As Justice Rehnquist pointed out in his dissent in Robbins, "Not only has historical study 'suggested that in emphasizing the warrant requirement over the reasonableness of the search the Court has "stood the fourth amendment on its head" from a historical standpoint.' Coolidge, supra, at 492 (Harlan, J., concurring) (quoting T. Taylor, Two Studies in Constitutional Interpretation, 23-24 (1969)), but the Court has failed to appreciate the impact of its decisions, not mandated by the Fourth Amendment, on law enforcement. . . ." (Robbins v. California, supra, 453 U.S. ___, ___.)*

I would affirm the judgment.

HANSON (Thaxton), J.

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*Advance Report Citation: 49 U.S.L.Week 4906, 4910-4911.

Los Angeles, Cal. December 9, 1981

TITLE People vs. Ruggles No. 35011

THE COURT:

PETITION FOR REHEARING DENIED.

I would grant: Hanson, J.

CLAY ROBBINS, Clerk

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

San Francisco, California 94102

JAN 27 1982

I have this day filed Order _____

HEARING DENIED

In re: 2 Crim. No. 35011

People

vs.

David Wendell Ruggles

Respectfully,

Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

Minutes of Division One February 3, 1982

35011 People v. David Wendell Ruggles

THE COURT:

Application for stay of issuance of remittitur and for order deferring execution and enforcement of judgment denied.

I would grant: Hanson, J.

Los Angeles, Cal. February 9, 1981

TITLE People vs. Ruggles No. 35011

REMITTITUR ISSUED

CLAY ROBBINS, Clerk

The Fourth Amendment to the United States Constitution reads:

"[SECTION 1.] The right of the people to be secure in their persons, houses, papers, effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution reads:

"Citizenship

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"Apportionment of Representatives

"SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the

proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

"Disqualification for Public Office

"SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of the State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

"Public Debt, Guarantee of

"SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

"Power of Congress

"SECTION 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 1538.5 of the California Penal Code reads:

"Motion to return property or suppress evidence

"Grounds

"(a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

"(1) The search or seizure without a warrant was unreasonable.

"(2) The search or seizure with a warrant was unreasonable because (i) the warrant is insufficient on its face; (ii) the property or evidence obtained is not that described in the warrant; (iii) there was not probable cause for the issuance of the warrant; (iv) the method of execution of the warrant violated federal or state constitutional standards; (v) there was any other violation of federal or state

constitutional standards.

"First Hearing

"(b) When consistent with the procedures set forth in this section and subject to the provisions of Section 170 through 170.6 of the Code of Civil Procedure, the motion should first be heard by the magistrate who issued the search warrant if there is a warrant.

"Evidence

"(c) Whenever a search or seizure motion is made in the municipal, justice or superior court as provided in this section, the judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion.

"Effect of granting motion

"(d) If a search or seizure motion is granted pursuant to the proceedings

authorized by this section, the property or evidence shall not be admissible against the movant at any trial or other hearing unless further proceedings authorized by this section or Section 1238 or Section 1466 are utilized by the people.

"Return of property

"(e) If a search or seizure motion is granted at a trial, the property shall be returned upon order of the court unless it is otherwise subject to lawful detention. If the motion is granted at a special hearing, the property shall be returned upon order of the court only if, after the conclusion of any further proceedings authorized by this section or Section 1238 or Section 1466, the property is not subject to lawful detention or if the time for initiating such proceedings has expired, whichever occurs last. If the motion is granted at a preliminary hearing, the property shall be returned upon order of court after

10 days unless the property is otherwise subject to lawful detention or unless, within that time, further proceedings authorized by this section or Section 1238 are utilized; if they are utilized, the property shall be returned only if, after the conclusion of such proceedings, the property is no longer subject to lawful detention.

"Felony; motion at preliminary hearing

"(f) If the property or evidence relates to a felony offense initiated by a complaint, the motion may be made in the municipal or justice court at the preliminary hearing.

"Misdemeanor; pre-trial motion at special hearing

"(g) If the property or evidence relates to a misdemeanor complaint, the motion shall be made in the municipal or justice court before trial and heard prior to trial at a special hearing

relating to the validity of the search or seizure. If the property or evidence relates to a misdemeanor filed together with a felony, the procedure provided for a felony in this section and Sections 1238 and 1539 shall be applicable.

"Motion at trial

"(h) If, prior to the trial of a felony misdemeanor, opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion, the defendant shall have the right to make this motion during the course of trial in the municipal, justice or superior court.

"Felony; renewal of motion at special hearing; review

"(i) If the property or evidence obtained relates to a felony offense initiated by complaint and the defendant was held to answer at the preliminary hearing, or if the property

or evidence relates to a felony offense initiated by indiotment, the defendant shall have the right to renew or make the motion in the superior court at a special hearing relating to the validity of the search or seizure which shall be heard prior to trial and at least 10 days after notice to the people unless the people are willing to waive a portion of this time. The defendant shall have the right to litigate the validity of a search or seizure de novo on the basis of the evidence presented at a special hearing. After the special hearing is held in the superior court, any review thereafter desired by the defendant prior to trial shall be by means of an extraordinary writ of mandate or prohibition filed within 30 days after the denial of his motion at the special hearing.

"Relitigation of question after grant of motion; new evidence; review

"(j) If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return of the property or suppression of the evidence at the preliminary hearing is granted, and if the defendant is not held to answer at the preliminary hearing, the people may file a new complaint or seek an indictment after the preliminary hearing, and the ruling at the prior hearing shall not be binding in any subsequent proceeding. If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return or suppression of the property or evidence at the preliminary hearing is granted, and if the defendant is held to answer at the preliminary hearing, the ruling at the preliminary hearing shall be binding upon the people unless, upon notice to the defendant and the court

in which the preliminary hearing was held and upon the filing of an information, the people within 15 days after the preliminary hearing request in the superior court a special hearing, in which case the validity of the search or seizure shall be relitigated de novo on the basis of the evidence presented at the special hearing, and the defendant shall be entitled, as a matter of right, to a continuance of the special hearing for a period of time up to 30 days. If defendant's motion is granted at a special hearing in the superior court, the people, if they have additional evidence relating to the motion and not presented at the special hearing, shall have the right to show good cause at the trial why such evidence was not presented at the special hearing and why the prior ruling at the special hearing should not be binding, or the people may seek appellate review as provided in subdivision (o), unless the court prior to the time such review is sought has dismissed the case pursuant

to Section 1385. If the property or evidence seized relates solely to a misdemeanor complaint, and the defendant made a motion for the return of property or the suppression of evidence in the municipal court or justice court prior to trial, both the people and defendant shall have the right to appeal any decision of that court relating to that motion to the superior court of the county in which such inferior court is located, in accordance with the California Rules of Court provisions governing appeals from municipal and justice courts in criminal cases. If the people prosecute review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them.

"Release of defendant pending resumption of proceedings in trial court

"(k) If the defendant's motion to return property or suppress evidence is

granted and the case is dismissed pursuant to Section 1385, or the people appeal in a misdemeanor case pursuant to subdivision (j), the defendant shall be released pursuant to Section 1318 if he is in custody and not returned to custody unless the proceedings are resumed in the trial court and he is lawfully ordered by the court to be returned to custody.

"If the defendant's motion to return property or suppress evidence is granted and the people file a petition for writ of mandate or prohibition pursuant to subdivision (o) or a notice of intention to file such a petition, the defendant shall be released pursuant to Section 1318 unless (1) he is charged with a capital offense in a case where the proof is evident and the presumption great, or (2) he is charged with a noncapital offense defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 and the court orders that the defendant be discharged from actual custody upon bail.

"Stay; time for trial;
dismissal; continuance;
bail or release

"(l) If the defendant's motion to return property or suppress evidence is granted, the trial of a criminal case shall be stayed to a specified date pending the termination in the appellate courts of this state of the proceedings provided for in this section, Section 1238, or Section 1466 and, except upon stipulation of the parties, pending the time for the initiation of such proceedings. Upon the termination of such proceedings, the defendant shall be brought to trial as provided by Section 1382, and subject to the provisions of Section 1382, whenever the people have sought and been denied appellate review pursuant to subdivision (o), the defendant shall be entitled to have the action dismissed if he is not brought to trial within 30 days of the date of the order which is the last denial of the petition. Nothing contained in

this subdivision shall prohibit a court, at the same time as its rules upon the search and seizure motion, from dismissing a case pursuant to Section 1385 when such dismissal is upon the court's own motion and is based upon an order at the special hearing granting defendant's motion to return property or suppress evidence. In a misdemeanor case, the defendant shall be entitled to a continuance of up to 30 days if he intends to file a motion to return property or suppress evidence and needs this time to prepare for the special hearing on the motion. In case of an appeal by the defendant in a misdemeanor case from the denial of such motion, he shall be entitled to bail as a matter of right, and, in the discretion of the trial or appellate court, may be released on his own recognizance pursuant to Section 1318.4.

"Exclusive pre-trial remedy; review on appeal after conviction

"(m) The proceedings provided for in this section, Section 995, Section 1238, and Section 1466 shall constitute the sole and exclusive remedies prior to conviction to test the unreasonableness of a search or seizure where the person making the motion for the return of property or the suppression of evidence is a defendant in a criminal case and the property or thing has been offered or will be offered as evidence against him. A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that such judgment of conviction is predicated upon a plea of guilty. Such review on appeal may be obtained by the defendant providing that at some stage of the proceedings prior to conviction he has moved for the return of property or the suppression of the evidence.

"Motion on other grounds;
existing law and procedure

"(n) Nothing contained in this section shall prohibit a person from making a motion, otherwise permitted by law, to return property, brought on the ground that the property obtained is protected by the free speech and press provisions of the Federal and State Constitutions. Nothing in this section shall be construed as altering (i) the law of standing to raise the issue of an unreasonable search or seizure; (ii) the law relating to the status of the person conducting the search or seizure; (iii) the law relating to the burden of proof regarding the search or seizure; (iv) the law relating to the reasonableness of a search or seizure regardless of any warrant which may have been utilized; or (v) the procedure and law relating to a motion made pursuant to Section 995 or the procedures which may be initiated after the granting or denial of such a motion.

"People's petition for
mandate or prohibition;
notice of intention

"(o) Within 30 days after a defendant's motion is granted at a special hearing in the superior court, the people may file a petition for writ of mandate or prohibition, seeking appellate review of the ruling regarding the search or seizure motion. If the trial of a criminal case is set for a date which is less than 30 days from the granting of a defendant's motion at a special hearing in the superior court, the people, if they have not filed such a petition and wish to preserve their right to file such a petition, shall file in the superior court on or before the trial date or within 10 days after the special hearing, whichever occurs last, a notice of intention to file such a petition and shall serve a copy of the notice upon the defendant."

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Date: MARCH 8, 1982 DEPT. 129

HONORABLE RONALD M. GEORGE, JUDGE

Case No. A 347889

PEOPLE OF THE STATE OF CALIFORNIA

vs.

RUGGLES, DAVID WENDELL

NATURE OF PROCEEDINGS - TRIAL SETTING WITHDRAWAL OF GUILTY PLEA RE: RETURN OF REMITTITUR
REM 2-2-79

DEFENDANT WITHDRAWS HIS GUILTY PLEA OF 3-29-79 AND NOW ENTERS A PLEA OF NOT GUILTY. THE COURT HEREBY SETS ASIDE ITS ORDER "DENYING THE MOTION TO SUPPRESS THE EVIDENCE OF THE CONTENTS OF THE BRIEFCASE" PURSUANT TO REMITTITUR AND NOW ENTERS ITS ORDER SUPPRESSING THE EVIDENCE DISCOVERED FROM THE SEARCH OF THE BRIEFCASE.

MINUTE ORDER

118.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Date: MARCH 16, 1982 DEPT. 129

HONORABLE RONALD M. GEORGE, JUDGE

Case No. A 347889

PEOPLE OF THE STATE OF CALIFORNIA

vs.

RUGGLES, DAVID WENDELL

NATURE OF PROCEEDINGS—EX-PARTE ORDER OF THE COURT

Upon receipt this date of a certified copy of the order of MARCH 11, 1982, of WILLIAM H. REHNQUIST, Associate Justice of the U.S. Supreme Court staying execution and enforcement of the judgment of the Court of Appeal of California, second appellate district in these proceedings, this Court hereby vacates its order of March 8, 1982, in its entirety, including but not limited to the setting of trial on April 2, 1982. The matter is ordered advanced to March 19, 1982 at 9:00 A.M. Defendant is to remain remanded without bail and is ordered to Court on March 19, 1982 at 9:00 A.M.

The Court directs the clerk to advise counsel for both sides this date of the foregoing Court Order to mail all counsel and the Sheriff's Department copies thereof this date.

MINUTE ORDER

119.

Opposition

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-1778

STATE OF CALIFORNIA,

Petitioner,

vs.

DAVID WENDELL RUGGLES,

Respondent.

APPLICATION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-1778

STATE OF CALIFORNIA,

Petitioner,

vs.

DAVID WENDELL RUGGLES,

Respondent.

APPLICATION FOR LEAVE TO

PROCEED IN FORMA PAUPERIS

TO: THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT

Respondent, David Wendell Ruggles, respectfully seeks leave to proceed in forma pauperis without payment of fees and costs. Counsel's affidavit in support of this application is annexed.

PAUL W. GRACE, Esq.
STEPHEN YAGMAN, Esq.
1301 South Scott Street
Suite 238
Arlington, Virginia 22204
(202) 377-6424

Washington, D.C.
June 24, 1982

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-1778

STATE OF CALIFORNIA,

Petitioner,

vs.

DAVID WENDELL RUGGLES,

Respondent.

AFFIDAVIT OF PAUL W. GRACE

WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

PAUL W. GRACE, being duly sworn, deposes and says:

I am an attorney at law, admitted to practice before this Honorable Court. I make this affidavit in support of the annexed application for leave to proceed here in forma pauperis without payment of fees and costs.

Mr. Ruggles was represented at trial in the Superior Court of the State of California for the County of Los Angeles by an attorney appointed by the court because he did not have sufficient funds to retain private counsel. I was appointed by the Court of Appeal of the State of California, Second Appellate District, to represent Mr. Ruggles on appeal because he did not have sufficient funds to retain private counsel. I prepared the brief for Mr. Ruggles on that appeal as well as a Petition for Hearing in the California Supreme Court, which was denied.

An Application for Leave to Proceed in Forma Pauperis and a Petition for a Writ of Certiorari were filed on behalf

of Mr. Ruggles in this Court (No. 80-5677). On July 2, 1981, this Court granted Mr. Ruggles' application and petition, vacated the decision of the state court, and remanded for reconsideration in light of Robbins v. California.

I represented Mr. Ruggles on remand, and the Court of Appeal reversed his conviction. The State of California has petitioned this Court for certiorari after a Petition for Hearing was denied by the California Supreme Court.

Mr. Ruggles is still incarcerated in California. I have no further information which would suggest that his financial status has changed.

WHEREFORE, it is respectfully prayed that respondent's application for leave to proceed herein in forma pauperis be granted.

Dated: June 24, 1982

Paul W. Grace
PAUL W. GRACE

Subscribed and sworn to before me
this 24th day of June, 1982.

Margaret A. Doyle
NOTARY PUBLIC

MY COMMISSION EXPIRES 1/1/84

ORIGINAL

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IN THE

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OCTOBER TERM, 1981

NO. 81-1778

STATE OF CALIFORNIA,

Petitioner,

vs.

DAVID WENDELL RUGGLES,

Respondent.

RESPONSE OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TOPICAL INDEX

	Page
QUESTION PRESENTED	1
JURISDICTION	1
THE PROCEEDINGS BELOW	1
STATEMENT OF FACTS	2
ARGUMENT	4
THE COURT OF APPEAL CORRECTLY CONCLUDED THAT THE WARRANTLESS SEARCH OF THE BRIEFCASE WAS IMPROPER	6
CONCLUSION	7

TABLE OF AUTHORITIES

Cases	Pages
Arkansas v. Sanders, 442 U.S. 753 (1979)	3,6
Carroll v. United States, 267 U.S. 132 (1925)	6
Chambers v. Maroney, 267 U.S. 42 (1970)	6
Katz v. United States, 389 U.S. 347 (1967)	6
People v. Minjares, 24 Cal. 3d 410, cert. denied, 444 U.S. 887 (1979)	5
Robbins v. California, 453 U.S. 420 (1981)	2, 4
United States v. Chadwick, 433 U.S. 1 (1977)	5,6,7
United States v. Ross, 50 U.S.L.W. 4580 (U.S. June 1, 1982)	4,5,6,7

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-1778

STATE OF CALIFORNIA,

Petitioner,

vs.

DAVID WENDELL RUGGLES,

Respondent.

RESPONSE OF RESPONDENT IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

QUESTION PRESENTED

Whether probable cause to believe that a closed, latched briefcase contains contraband justifies the warrantless search of the briefcase when the briefcase is placed in the trunk of an automobile shortly before it is seized by police?

JURISDICTION

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, section 1257(3).

THE PROCEEDINGS BELOW

Following denial by the Los Angeles County Superior Court of respondent Ruggles' motion to suppress evidence pursuant to California Penal Code section 1538.5, and pursuant to a negotiated plea bargain, respondent Ruggles agreed to enter a plea of guilty to the first count of an amended information (robbery and use of a weapon). In return, on motion of petitioner, State of California, the second count of the information (possession of a firearm by an ex-felon) and the

single count in a second consolidated case were dismissed.

Respondent Ruggles filed a timely appeal contending that the warrantless search of the closed, latched attache case found in the trunk of his car was unreasonable. The decision of the Superior Court was upheld in an unpublished opinion (Pet. for Cert. App., p. 1). The California Supreme Court denied Ruggles' Petition for Hearing (Pet. for Cert. App., p. 22), but on July 2, 1981, the United States Supreme Court granted Ruggles' Application for Leave to Proceed in Forma Pauperis and his Petition for Certiorari, ordered the judgment of the California appellate court vacated, and remanded the case to the California Court of Appeal for further consideration in light of Robbins v. California, 453 U.S. 420 (1981).

On remand, the California Court of Appeal, Second Appellate District, Division One reversed the judgment of the Superior Court, directed the Superior Court to enter an order suppressing the evidence found in the briefcase, and ordered a new trial (Pet. for Cert. App., p. 23, at 52-53).

Petitioner, State of California, filed a petition for a rehearing, which was denied on December 9, 1981 (Pet. for Cert. App., p. 95). The California Supreme Court denied a hearing on January 27, 1982 (Pet. for Cert. App., p. 96).

A remittitur was issued on February 9, 1982 (Pet. for Cert. App., p. 98) after the Court of Appeal denied the State's application for stay of issuance of remittitur (Pet. for Cert. App., p. 97). On March 11, 1982, Justice Rehnquist granted the State of California's Application for a Stay of Enforcement of Judgment pending disposition of this Petition for Certiorari.

STATEMENT OF FACTS

The facts relating to the motion to suppress evidence were summarized by the California Court of Appeal in its

published opinion filed on November 11, 1981. 178 Cal. Rptr. 231, 233-34 (1981)(Pet. for Cert. App., pp. 26-32). Police surveillance of Ruggles began in November, 1978 after officers of the Los Angeles Police Department received information from a confidential informant that Ruggles may have been involved in a motel robbery in July, 1978. Tentative identification of Ruggles was made by one of the victims of the robbery from a photographic showup display. The police determined that based on this information and the tentative identification, they had probable cause to believe that Ruggles had committed the robbery. However, no attempt was made to arrest Ruggles or to secure an arrest warrant because the police officers hoped that by placing Ruggles under surveillance they might be led to an accomplice.

On January 2, 1979, the police received information that Ruggles was going to meet another suspect the next morning, and that they might commit a major robbery. The informant indicated that two handguns would be used and that Ruggles normally carried one gun in the small of his back and would carry the second weapon in a briefcase or satchel.

A surveillance team made up of at least eleven police officers with five or six police vehicles and a police helicopter assembled the next morning near the designated meeting place. Shortly thereafter, the officers observed as Ruggles arrived at the location alone, driving an automobile. Ruggles parked his car, exited the vehicle, looked up and down the street, removed a briefcase from the trunk of his car, and entered a nearby apartment building. A few minutes later, Ruggles emerged alone and returned to his car. He replaced the briefcase in the trunk of the car and drove toward the Ventura Freeway,

stopping at a gas station before proceeding westbound on the freeway. The briefcase had been placed in the automobile trunk in full view of the officers, and the vehicle never left their sight before the briefcase was in police custody.

As Ruggles approached the county line, a black and white police vehicle pulled in behind his car, displayed a red light, and caused Ruggles to pull over to the center divider. The other surveillance units immediately surrounded Ruggles as he emerged from his car. Several officers approached Ruggles displaying handguns and at least one shotgun, and ordered him to lie face down on the ground. The helicopter was circling overhead. Ruggles complied immediately and was handcuffed, patted down, and informed that he was under arrest. No weapon was found on his person or in the passenger compartment of his car. One of the officers took the car keys from Ruggles and opened the car trunk. The officer removed the closed, latched briefcase, opened the briefcase, and searched it finding two handguns and other materials that the State sought to introduce into evidence over Ruggles' objection.

ARGUMENT

THE COURT OF APPEAL CORRECTLY CONCLUDED THAT THE WARRANTLESS SEARCH OF THE BRIEFCASE WAS IMPROPER

The State court correctly concluded that the police officers violated respondent's Fourth Amendment rights when they conducted a warrantless search of respondent's briefcase. This Court's recent decision in United States v. Ross, 50 U.S.L.W. 4580 (U.S. June 1, 1982), reinforces that conclusion.

The California Court of Appeal, in Ruggles, determined that the search of the briefcase was illegal under Robbins v. California, 453 U.S. 420 (1981), but also noted that its

conclusion also was compelled by People v. Minjares, 24 Cal. 3d 410, cert. denied, 444 U.S. 887 (1979), and by Arkansas v. Sanders, 442 U.S. 753 (1979), and United States v. Chadwick, 433 U.S. 1 (1977). See Pet. for Cert. App., pp. 47-49.

This Court, in United States v. Ross, supra, sought to clarify when the so-called "automobile exception" to the warrant requirement may be invoked and when a police officer may conduct a warrantless search or a closed container found in an automobile. In Ross, the focus of the warrantless search was the vehicle itself. The officer in Ross had been informed that Ross had just completed a narcotics sale and that Ross had additional narcotics in the trunk of his car. 50 U.S.L.W. at 4581. That information was said to justify a search of Ross' automobile and of any containers within the automobile that could secrete the suspected contraband:

> The scope of a warrantless search of an automobile thus is not confined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab.

Id. at 4587 (emphasis added). The Court continued: "We hold that the scope of the warrantless search authorized by [the automobile] exception is no broader and no narrower than a magistrate could legitimately authorize by warrant." Id. at 4587-88.

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In the instant case, the information relied upon by the police officers to establish probable cause indicated that a weapon might be found on Ruggles' person or in a briefcase in his possession. Had the police sought out a magistrate for a search warrant for the weapons based upon this information, the magistrate could have issued a warrant to search "the places in which there is probable cause to believe that [the object of the search] may be found...." i.e., on Ruggles' person and in his briefcase.

The decision in Ross quite clearly was strictly an automobile search case. When the focus of an officer's attention falls generally upon an automobile, the "specifically established and well-delineated" exception announced in Carroll v. United States, 267 U.S. 132 (1925), and reaffirmed in Chambers v. Maroney, 399 U.S. 42 (1970), and in United States v. Ross, 50 U.S.L.W. 4580 (1982), permits the warrantless search "of every part of the vehicle and its contents that may conceal the object of the search." Ross 50 U.S.L.W. at 4588. See Katz v. United States, 389 U.S. 347, 357 (1967).

The Ross Court also expressly reaffirmed the rule announced in United States v. Chadwick, 433 U.S. 1 (1977), and reaffirmed in Arkansas v. Sanders, 442 U.S. 753 (1979), that the "automobile exception" does not apply to every movable container that is suspected to contain contraband, even though the container had been placed in a vehicle shortly before it is seized. Ross, 50 U.S.L.W. at 4583-85. As the Chief Justice wrote, concurring in Sanders:

> Here, as in Chadwick, it was the luggage being transported by respondent at the time of the arrest, not the automobile in which it was being carried, that was the suspected locus of the contraband. The relationship between the automobile and the contraband was purely coincidental, as in Chadwick. The

> fact that the suitcase was resting in the trunk of the automobile at the time of respondent's arrest does not turn this into an "automobile" exception case.

442 U.S. at 766-67, quoted in Ross, 50 U.S.L.W. at 4584-85.

In the instant case, the attention of the police officers was specifically directed to Ruggles' briefcase. The probable cause to search the briefcase, if it existed at all, existed regardless of where the briefcase was placed, whether in a bus station locker, in a closet in a residence, or in the trunk of an automobile. Here, as in Chadwick and in Sanders, the fact that the briefcase happened to be resting in the trunk of an automobile when it was seized did not justify the warrantless search.

CONCLUSION

The Court of Appeal correctly applied the law regarding warrantless searches of movable containers. The appellate court ruled that when police officers have probable cause to believe that a specific container contains contraband, a warrant must be obtained before the container may be searched. When the attention of law enforcement officers is focused upon a particular container, the fact that the container is found resting in the trunk of an automobile does not obviate the warrant requirement of the Fourth Amendment.

Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 1982, I served a copy of the Respondent's Application for Leave to Proceed *in Forma Pauperis* and Response of Respondent in Opposition to Petition for Writ of Certiorari upon Petitioner by depositing a true and correct copy, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Arlington, Virginia, and addressed to the attorney for Petitioner as follows:

John R. Gorey, Esq.
Deputy Attorney General
3580 Wilshire Boulevard
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